

WATER LOG

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PREFACE

As discussed in a recent issue of the *Water Log* (Vol. 4, No. 2), the last decade has witnessed a significant population growth trend in our coastal counties, accompanied by an increased demand for real estate and housing, especially in the coastal resort areas. At the same time, there has been a well-publicized renewed interest in the renovation of both residential and commercial property of historic significance. This is due partially to a genuine concern by citizens about the loss of older buildings and historic areas to developmental pressures, and partially to what might be described as a "Yuppie" reaction against the suburban environment in which the baby boom generation was raised. These young professionals often buy or rent into the unique setting of historic or renovated urban residences and office space.

The nationwide movement for restoration and preservation of historic areas is built around a hodge-podge of national, state, and local

government incentives (including reductions in property taxes, income taxes, and assistance with financing) and preservation laws (which are closely akin to land use and zoning laws.) This issue of the *Water Log* touches upon the preservation laws that are relevant to Mississippi and Alabama, describing the federal statutes, state laws, and local ordinances for the preservation of historic districts.

Economic incentives, most via tax laws, are equally important to historic preservation and restoration, especially when considered in conjunction with the business of real estate investment; however, this aspect is beyond the purview of the current publication. For further information on preservation law and an excellent discussion of the economic aspects of historic preservation and restoration, *A Handbook on Historic Preservation Law* is recommended. (See book review elsewhere in this issue).

be reviewed by the advisory council before projects potentially affecting them can go forward. Finally, it makes owners of property eligible for federal grants, loans, and tax breaks to encourage the restoration and maintenance of the resources.

As stated earlier, one purpose of the Act is to encourage local and state governments to establish preservation programs by making funding available to assist in the development and maintenance of structured preservation efforts. An approvable State Historic Preservation Program (SHPP) must be adequately staffed with qualified personnel, led by a state historic preservation officer who is appointed by the Governor. The SHPP must have the resources to prepare and implement a statewide historic preservation plan that has mechanisms to assure effective public participation and to certify plans developed at the local level. The program should also include a public information, education, and training component. In addition to professional staff, a SHPP must create a State Review Board as an advisory body to review National Register nominations and guide in the development and administration of the state's preservation plan.

The National Historic Preservation Act is the vehicle for federal involvement in international preservation efforts as well. It places the Secretary of the Interior in charge of U.S. participation in the Convention Concerning the Protection of the World's Cultural and National Heritage. The Secretary is responsible for nominating federally-owned properties that have been determined to be of both national and international significance. [See C.F.R. §73 (1984) for nomination criteria and procedural steps.] Upon written consent of the owner, private property may also be proposed for international listing.

Historic Sites Act of 1935

The Historic Sites Act of 1935, a precursor of the NHPA, provides for the designation of National Historic Landmarks which illustrate the history or pre-history of the United States. 16 U.S.C.A. § 461 (West 1977 & West Supp. 1984). National Historic Landmarks are automatically included in the National Register. The nomination process and selection criteria are somewhat different for landmark designation, however. The National Park Service announces by publication in the Federal Register the initiation of thematic studies used to identify property of national historic significance. Appropriate government officials and entities are permitted to submit nominations of sites consistent with the theme being studied. Detailed criteria emphasizing historic values are used to evaluate the proposed sites. As with National Register designations, private owners have a veto over official designation. The effect of National Historic Landmark status is the same as National Register listing.

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FEDERAL PRESERVATION LAW

Introduction

Federal historic preservation law began in the late 1800's with programs commemorating prominent national public figures and military battles. In the century that has followed these initial efforts, the government's role has expanded to include preservation of (1) archaeological resources, (2) sites of architectural significance, and (3) other cultural resources on both public and private lands. This article presents an overview of current federal statutes designed to prevent the loss of significant historic resources.

The National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA) is the cornerstone of contemporary governmental preservation law. 16 U.S.C.A. §§470 *et seq.* (West 1974 & West Supp. 1984) and accompanying regulations at 36 C.F.R. §60 (1984). It establishes a framework for identifying and preserving U.S. cultural resources at the federal, state and local levels. The Act creates the National Register of Historic Places, an official listing of the nation's historical properties and cultural resources deemed worthy of preservation. In addition, it encourages federal agencies to consider the effects of their action on such resources by providing the Advisory Council on Historic Preservation with an opportunity to comment on agency actions that could adversely affect properties included in, or eligible for inclusion in, the National Register ("§106 review"). Finally, the

Act authorizes the distribution of federal grant monies to state and local governments with approved historic preservation programs.

Property listed on the National Register receives the greatest degree of protection from alteration or destruction. Buildings, sites, and objects that are significant in the fields of American history, architecture, archeology, engineering and/or culture are eligible for placement on the Register. Such property can be nominated by (1) federal agency heads, (2) state or local government officials, (3) individual citizens, (4) Congress (as an addition to the National Park System), or (5) the Secretary of the Interior (when the property is also listed as a National Historic Landmark). Nominations are made to the National Park Service which evaluates the site based upon predetermined criteria. [See 33 C.F.R. §60.6 (1984).] If the property proposed for designation is privately owned, the owners must be given notice and an opportunity to comment on the listing. If the owners object, the property cannot be listed, although a determination of eligibility can still be made. In the case of an historic district, the above veto applies when the listing is disapproved by a majority of the landowners in the district.

The primary purpose of the National Register is to serve as an inventory that can be used as a planning tool by government, private organizations, and individuals to identify cultural resources worthy of preservation. It ensures that such resources will

ALABAMA HISTORIC PRESERVATION LAW

Introduction

Alabama provides for historical preservation through several enactments designed to protect specific properties, as well as through broader grants of power for state-wide and local preservation activities. For example, the law authorizes a commission to establish, promote, and operate a memorial park to exhibit the battleship U.S.S. Alabama. Ala. Code §§41-9-340 *et seq.* (1975). Site-specific statutes, of course, do not offer a comprehensive system of preservation. However, Alabama law attempts to provide an overall framework at both the state and local levels. At state level, the law directs the Alabama Historical Commission to acquire historical sites it deems worthy of being preserved. Ala. Code §41-9-240 (1975). At the local level, the Historical Preservation Authorities Act of 1979 authorizes the creation of public corporations in order to preserve sites listed in the National Register of Historic Places. Ala. Code §41-10-137 (1975).

The Alabama Historical Commission

The commission consists of a twenty-member board of directors, chosen from various political and scientific backgrounds. A board of advisors consisting of members from a cross-section of the state's historical organizations assists the commission in its role as the state-wide "overseer" of preservation activities.

The purpose for which the legislature has set up the commission is to acquire properties (including buildings, objects and sites) that are worthy of being preserved because of their historical significance. In order to assure an appropriate physical setting for historical sites, the commission also has the power to acquire adjacent properties. Such historical properties include, but are not limited to: buildings of great architectural importance, birthplaces of famous persons, and sites of great historical significance to the state of Alabama and the nation.

The law vests in the commission a list of duties and general powers to exercise in achieving its purpose. For the convenience of discussion, these powers may be divided into broad categories. The first power is to determine which properties are worthy of preservation. Basically, the commission formulates criteria for certification of properties, and published surveys of historically significant properties in the state. The commission then determines which properties are worth preserving and must nominate such landmarks to the National Register of Historic Places (the Register). The second type of power is that of acquiring property of historical importance. The commission is directed to accept property it deems worthy of renovating or preserving from any branch of government or person. Furthermore, the commission may exercise the power of eminent domain to acquire "any historical structure of paramount importance," such as those that are eligible for the Register. Two-thirds of the commission's directors must approve acquisition by eminent domain.

Once the historic properties are acquired, the commission must exercise its duty to make renovations and improvements to registry properties. Because no definition of terms such as "renovate" or "preserve" appear in the statute, it is unclear how the commission is to proceed in this area.

According to the statute, the commission may generate income by charging admission to its exhibits, selling souvenirs, or selling pamphlets that describe the various historical buildings and sites under its control. The commission's major income generating power, however, lies in its authority to lease its acquisitions to public or private agencies. All of the moneys received by the commission through its operation are deposited in the Alabama State Historical Preservation Fund. As a non-profit public corporation, the commission enjoys a tax exempt status.

Finally, the commission has the duty to promote knowledge about the history of Alabama to the general public. To this end, the commission publishes pamphlets and a newsletter of its activities, exhibits its acquisitions, and prepares "how to" manuals on preservation techniques. In addition, the commission may present citations to citizens for their meritorious service in the area of historical preservation.

Several other provisions of the law elaborate on and expand the commission's authority. For example, the commission is empowered to operate the state historic preservation depository, where artifacts are kept. Also, the commission has been granted the power to administer several specific historic sites that were previously operated by independent commissions. Among these are the Confederate Memorial Cemetery in Chilton County, and Fort Morgan in Mobile County.

The powers of the commission lose much of their first-glance impressiveness when it is recalled that there are certain valuable powers that were withheld. For instance, the commission does not have a specific grant of authority to prohibit or penalize a property owner from demolishing a building or other structure of historic value. Furthermore, although the police power of eminent domain may be exercised, the requirement of a two-thirds vote of the commission could be an overwhelming obstacle. Nor does the commission have the power to create historical districts. These deficiencies are remedied to some extent by local preservation enactments. Regardless, the commission in no way provides an historic preservation framework from which enforceable authority and responsibility flow in direct and clearly defined paths.

Historical Preservation Act 1979

According to this law, public corporations (called historical preservation authorities by statute—hereinafter referred to as authorities/authority) may be formed for the purpose of local preservation of properties listed in the Register. This power extends to making improvements on facilities near Register properties, as well. An authority's area of operation may cover a municipality or a single or multi-county area. The local government appoints the authority's members, except in the case of a multi-county authority, the members of which are appointed by the Governor.

This Act further provides that authorities may be formed to achieve three statutory goals. The first is to make studies regarding the preservation of Register properties. Second, authorities may be formed to participate, either singly or in conjunction with other agencies, in preservation efforts that involve these properties. Finally, authorities may lend financial assistance to undertakings that involve Register properties.

The law vests in each authority certain general powers with which to achieve its statutory goals. The authority may sue and be sued, enter into contracts and leases, purchase insurance, and invest excess funds. Significantly, an authority may acquire and dispose of any interest in real or personal property. Furthermore, the authority may make studies and participate in the preservation of any Register property within its area of operation. For example, the authority may engage in the supervision of any construction project concerning Register properties. Also, the law directs the authority to obtain funds by any means it deems advisable. For instance, the authority may borrow money or obtain grants from any level of government or any person.

Finally, and perhaps of greatest importance, is the authority's power to fund its preservation efforts by issuing interest-bearing bonds. The board of directors of each authority controls the issuance of these bonds. It has total discretion in deciding the denomination, maturity date, principal amount, and interest rates to appear on the bonds. Bonds may be sold by public or private sale, and may be refunded by the the issuance of refunding bonds by the authority. It is important to note that there is no public hearing with regard to the issuance of a bond by an authority.

Bonds may be made payable only out of revenues specified in the board's authorization proceeding. According to statute, such revenues are restricted to those derived by the authority through its operations and dealings with its property. In other words, funding from other sources (such as grants or loans) is not permitted to pay off bonds.

As security for interest or principal of the bonds it issues, an authority may enter into contracts promising to protect the bonds by proper application of the proceeds, continued operation of any specific property, and imposition of reasonable rental rates. The authority may also secure its bonds by the execution of mortgage liens on any of its properties. Such liens are filed in the probate court of the county in which the property is located.

All proceeds derived from a bond issuance are to be used solely for the purpose for which the bond was authorized. This includes paying any expenses incidental to the bond's authorization.

Each authority enjoys a tax exempt status. This means that all the property and income gained by dealings and operation of the property may not be taxed by the state. Furthermore, neither bond proceeds, nor the interest of the bonds payable to the holder may be taxed by the state. Finally, the authority is exempt from all state or county certification recording costs and court filing fees.

The Historical Preservation Act of 1979 provides an important but limited legal framework for local preservation. Indeed, the legislature clearly states that this law is to be construed as merely a supplement to any other national, state, or local government level preservation enactment covering Register properties. This lack of superiority over state and local ordinances apparently prevents the authorities from taking a leading role in the development of preservation initiatives. The authorities are granted a largely supervisory role in the preservation of Register properties. The

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MISSISSIPPI HISTORIC PRESERVATION LAW

Introduction

Mississippi has several types of preservation enactments, as do most other states. For example, there is a tax exemption for all real or personal property belonging to any historical association and used on a non-profit basis. Miss. Code Ann. §27-31-1 (d) (Supp. 1983). In addition, several state laws focus on the preservation of special sites of historical importance (such as Miss. Code Ann. §39-5-51 (1972), which relinquishes Jefferson Davis' home to the United Sons of Confederate Veterans).

Obviously, these statutes alone do not provide a comprehensive scheme for historic preservation. However, a framework for preservation does exist under Mississippi law, at two levels of government. At the state level, the Antiquities Law of Mississippi directs the Board of Trustees of the state Department of Archives and History to locate and preserve "all sites, objects, buildings, and shipwrecks . . . of historical, archaeological, or architectural significance . . ." Miss. Code Ann. §§39-7-1 *et seq.* (Supp. 1983).

Local initiatives, on the other hand, have been undertaken under the authority of the Mississippi Local Government Historic Preservation Law of 1978. Miss. Code Ann. §§39-13-1 *et seq.* (Supp. 1983). This law delegates the authority to enact preservation ordinances to the county or municipal level, although as a mechanism for preservation, the Act is incomplete. [See W. Roger Jones, "Historic Preservation and the Zoning Power: A Mississippi Perspective", 50 MLJ 533 (1979).]

A description of and comment on these preservation schemes follows, along with several examples of local initiatives that attempt to fill in the gaps left by the enabling statutes.

The Antiquities Law of Mississippi

This law empowers the Board of Trustees of the Department of Archives and History (the Board) to designate sites and objects of historical, archeological or architectural significance as Mississippi Landmarks. The Board may also remove sites from designation, if it determines by majority vote that the subject is not of sufficient significance to warrant further classification as a Mississippi Landmark.

"Historical significance" is defined as "that quality . . . associated with events [or persons] that have made a significant contribution to the broad patterns of state, local or national history." "Archeological significance" means yielding or likely to yield important information regarding the state's history or prehistory. "Architectural significance" embodies the distinctive characteristics of type, period or method of construction, representing the work of a master, or possessing high artistic value.

All such artifacts on public lands (including submerged lands) are declared by this legislation to be Mississippi Landmarks, and sole property of the state. Significant artifacts on private lands may also be designated as Mississippi Landmarks by majority vote of the Board, with the written consent of the landowner. Consent must be accompanied by a description sufficient to locate the site, and the designation must be recorded in the county deed records. None of these landmarks may be salvaged, altered, or destroyed without a contract or permit granted by the Board.

The Board of Trustees is directed to preserve such landmarks by providing for survey operations, excavation, and/or salvage through issuing permits or awarding contracts that have been approved by the state Attorney General. Such contracts may be performed for a percentage of the reasonable cash value of the objects or for a fair share of the objects themselves. Permits may also be granted for performing excavations, salvage operations and on-site studies. These permits may allow the permittee to retain a specified portion of the find, although title to any of the affected objects remains with the state until relinquished by the Department of Archives and History. If the activities described in this paragraph are to occur on private property, the consent of the landowner must be obtained.

If the Board determines that any transfers of public lands to private parties, or any public improvement activity or construction may adversely affect a potential Mississippi Landmark, such transfers or construction may not commence until all necessary investigations of the site, and/or salvage of historic objects have been done. This investigatory and salvage work must be performed expeditiously, so as not to unduly delay a public construction project. If during construction or public improvement some discovery of historical, archeological or architectural significance is made, the Board must be notified. It may prohibit further activity that would irreparably harm the discovery if it is determined that the site possesses unusual significance, and is likely to be the sole representative of a type or period.

A violation of these provisions is a misdemeanor, with fines ranging from \$500-\$5000, or confinement in jail for up to thirty days, with each day of continued violation counting as a new offense. The Board may grant a finder's fee of up to \$500 for the arrest and conviction of any person in violation of the Act. The state Attorney General, or any "citizen in the state," is also granted the power to bring a civil action to enjoin violations or threatened violations, and for the return or restoration of items taken in violation of this Act.

The Mississippi Local Government Historic Preservation Law of 1978

According to this law, each municipality and county in the state is empowered to jointly or individually provide for the establishment of historic preservation districts, to designate historic landmarks, and to enact the necessary ordinances for their preservation. To meet the due process requirements under the U.S. Constitution, such ordinances may only be adopted after appropriate investigation and public notice and hearing. Notice is to be published once a week for at least three consecutive weeks and must specify the boundaries and locations of the areas affected.

Before the designation of an historic district, the county or municipality must establish an historic preservation commission, to preserve, promote and develop the historical resources of the area. Nine residents of the area are to be appointed by the local governing authority, with due regard for proper representation in such fields as history, architecture, urban planning, archeology and law.

The power of eminent domain is expressly denied the governing authorities for the purpose of preservation. However, because county boards

of supervisors are authorized to acquire historic sites by "gift or grant" under another statute, this provision does not present a serious obstacle to the local governments' acquisition of historically significant property.

What may be more of a problem is the lack of any further guidance in the law as to the nature of measures to be taken by a commission in administering its duty. The extent of instruction is found in section 39-13-7 of the Act, which stipulates that the Department of Archives and History is to make an analysis and present recommendations prior to the designation of historic districts. This advisory role of the Department of Archives and History (Office of Historic Preservation) is helpful to, but not coercive upon, the commissions.

The Office of Historic Preservation is available to answer questions and offer suggestions for the development of historic district ordinances, but its recommendations do not have the clear force of law.

Neither, for that matter, do the decisions of the historic district commissions themselves—another problem that should be addressed through legislation. Although the Act indicates that the commissions serve in an advisory capacity, a broader interpretation of the statutory language directing them to "preserve, promote and develop" is possible. As W. Roger Jones explains, this problem "may be painfully obvious when commission actions are not in accord with actions of those units of local government responsible for the administration of general laws of zoning, planning, construction and demolition. For example, structures with real potential for preservation might be deemed unsafe and suffer demolition under a building code ordinance. Similarly, owners of structures with no particular historic or aesthetic appeal may seek to delay appropriate action under building codes by resort to preservation procedures." Jones, *supra*, p. 562.

Furthermore, although when read together with the language of the Antiquities Act (discussed above) the standards for preservation seem clear, there is no guidance in this particular statute as to what constitutes "historical significance." These problems could be solved through legislated clarifications to the statutory language, either by defining the role of the commissions and the standards of historicity that they are to use, or by requiring the commissions themselves to adopt and publish operational standards, or both.

Another solution might be to see that landmark protection is adequately addressed in the Mississippi Coastal Program (MCP). Under the MCP, the Department of Archives and History is one of the "four coastal agencies" given explicit authority to determine whether proposed coastal zone activities comply with the provisions of the MCP which are under the Department's jurisdiction. Although the MCP states that the Department must consider the "state's comprehensive historic preservation plan," what this refers to is unclear. The Department's acquisition of coastal property, as well as issuance and renewal of permits for landmarks, are subject to the policy coordination procedures of the coastal program. There are no further guidelines in the MCP regarding historic preservation.

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BOOK REVIEW

A Handbook on Historic Preservation Law
Christopher M. Duerksen, Editor (1983)*

A Handbook on Historic Preservation Law is the product of a team of experienced preservation attorneys associated with the Conservation Foundation and the National Center for Preservation Law. According to Christopher Duerksen, a Senior Associate for the Conservation Foundation and editor of *A Handbook on Historic Preservation Law*, preservation law is "a collage, cutting across the drawing from several other established areas of law: land use and zoning, real property, taxation, local government, constitutional, and administrative." From his definition, the challenges to a lawyer, resource manager, or local government official working in the field are apparent. Keeping up with rapid changes in this multifaceted area of law is a demanding proposition.

The shared goal of the Conservation Foundation and the National Center for Preservation Law in producing the *Handbook* is to provide an updated overview of preservation law. The intended audience includes not only practicing attorneys, but also developers, municipal attorneys, and others involved with historic landmarks and districts.

The *Handbook* addresses three key areas of preservation law: governmental action, constitutional issues, and economic incentives. These three areas are necessarily interrelated. Traditionally, historic preservation was the bailiwick of local governments. Recently, however, state legislators and administrators have intensified preservation efforts. All fifty states have responded to federal initiatives for setting up programs. The National Historic Preservation Act of 1966 and its 1980 amendments provided funding for states to establish approved programs. Additionally, federal tax laws reinforce private preservation efforts. For example, the Tax Reform Act of 1976 provided tax incentives for preservation easements. The need to coordinate local, state and federal programs to provide effective preservation schemes is a recurring theme in the *Handbook*.

Part One of the *Handbook* provides an overview of how preservation law operates at the local, state, and federal levels. This section outlines existing programs for each level and then provides practical information concerning the development of effective legislation in light of these programs. (See articles in this issue concerning Mississippi and Alabama's participation in historic preservation programs). The authors emphasize the need for careful planning, drafting, and enforcement. In addition, they highlight the need for careful attention to proper administrative procedure in developing preservation plans and setting up review boards. They term this approach "preventative maintenance" to avoid legal challenges.

Although the authors emphasize the fact that legislative approaches to preservation must be carefully tailored to meet the goals and needs of a locality, they provide an appendix with model ordinances to serve as examples of well drafted ordinances. This complements their discussion of coordinating local objectives with attention to federal and state law in Part One.

Part Two, according to the editor, may be subtitled "the practicing lawyer's guide." It contains two chapters. One focuses on key constitutional issues and the other discusses administrative

ALABAMA AND MISSISSIPPI BOUNDARY CASES: UPDATE

[45 CCH S. Ct. Bull. P. B1157 (Feb. 26, 1985)]

In a unanimous opinion*, the U.S. Supreme Court ruled on February 26 that the waters of Mississippi Sound are inland waters, thereby vesting title to the lands submerged under the Sound to Alabama and Mississippi. In making its decision, the Court affirmed the conclusion of the Special Master that the Sound constitutes an historic bay under Article 7(6) of the Convention on the Territorial Sea and Contiguous Zone. The Court did not specifically adopt or reject the Special Master's additional finding that the Sound also meets the Convention's requirements for a juridical bay. It stated that "... we conclude that the Special Master correctly determined that Mississippi Sound is an historic bay. We therefore need not, and do not, address the exceptions ... that relate to the question whether the Mississippi Sound qualifies as a juridical bay under Article 7 of the Convention." In its opinion, the Court

reiterated the evidence cited by the Special Master establishing that the U.S. government has traditionally asserted and maintained dominion over the Mississippi Sound with the acquiescence of foreign nations. [See article on "Alabama and Mississippi Boundary Cases," 4 *Water Log* 4 (October-December 1984) for a discussion of the Special Master's opinion.] It determined that historic title to the Mississippi Sound as inland waters had ripened prior to the United States ratification of the Convention in 1961. Therefore, later disclaimers of the inland-water status of the Sound by the federal government constituted an impermissible contraction of a state's recognized territory and were therefore insufficient to divest Alabama and Mississippi of their entitlements to the submerged lands under the Sound.

*Note that Justice Marshall took no part in the consideration or decision of the case.

M. Casey Jarman

cases at the state and federal levels and litigation strategy. Among the key constitutional issues examined are updated arguments and case histories surrounding Fifth and Fourteenth Amendment "due process" arguments, Fifth Amendment "taking" issues, and First Amendment concerns for freedom of expression.

The chapter on preservation litigation is designed to familiarize attorneys who do not specialize in preservation law with litigation and administrative processes. Non-lawyers who become involved with contested cases may also profit from the chapter's step by step guidelines for case preparation and presentation. Antonio Rossman, the author of this chapter, favors an administrative approach to problem solving. He believes that today's courts are generally less accommodating to what he terms an "interventionist" ethic. From that viewpoint, Rossman provides an informational guide for both types of processes, administrative review and litigation. Ultimately, Rossman believes that "litigation cannot be a way of life for preservationists." He suggests that attorneys think in terms of redefining the framework in which decisions are made in a community, in the face of adverse decisions. An administrative approach lays the groundwork for greater efficiency and uniformity in decisionmaking.

Part Three focuses on the expanding set of economic tools at the preservationist's disposition. The emphasis of this section is on acquainting preservationists with the array of economic incentives and disincentives that he or she can employ to make revitalization economically sound. Richard Roddewig, the author of this chapter, provides a useful glossary of terminology for the novice in the field. He believes that current economic incentives to encourage preservation are poorly coordinated; therefore, government incentives to foster renovation are a necessity. Decisions concerning the preservation of historic landmarks should not be left to the vagaries of the marketplace. Furthermore, Rossman states, today's marketplace does not act independently of government policy. There is a need for carefully designed incentives that do not burden the owner or developer with red tape, yet which complement incentives at all levels of government. Roddewig

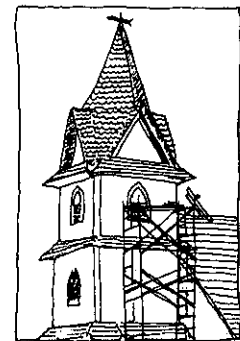
asserts that this need should be met by Congress, state legislators, and city councils in their legislative programs. He also calls for careful scrutiny of government regulations for their effort on preservation efforts. To him, it is imperative that the objectives of state enabling legislation be carried out at the local level. Finally, Roddewig provides guidelines for accomplishing these goals.

The *Handbook* provides useful reference material for further exploration of cases and readings in the field. Not only does it provide the preservationist with a compendium of information concerning the current state of preservation law, but it also challenges those involved in the field to develop a proactive approach to preservation by extending lines of communication between governmental officials at all levels, and by making a concerted effort to coordinate well-designed legislation.

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ERRATA

In the last issue of *Water Log*, reference was made to charts relevant to boating safety regulations and a map pertaining to the Mississippi Sound litigation. However, they were inadvertently omitted during printing. If you would like a copy of the charts and/or map, please send your request to: Sea Grant Legal Program, Law Center, Box 20, University, MS 38677.

PROPOSED HISTORIC SHIPWRECK LEGISLATION

Historic shipwrecks offer a glimpse of the past and an opportunity to learn more about the early exploration of the Western hemisphere. The recent discovery of the pirate ship *Whidah* off Cape Cod is a dramatic demonstration of the cultural value of preservation, as it is the first pirate ship uncovered in U.S. waters. The estimated value of its treasure is at least 400 million dollars. The benefits from learning about the trade and customs of the time, coupled with physical evidence of our nation's folk past, makes this find a priceless one. It is also an exceptional one. Historic shipwrecks of great value represent only a few of the shipwrecks off our nation's shores. As Wilburn Cockrell of the State of Florida's Bureau of Historic Sites and Properties testified at a Congressional hearing on the subject of shipwreck law, "[t]he public perception is now that the ocean floor is littered with gold . . . but the fact of the matter is, only a few of these wrecks are treasure ships. The hundreds of other wrecks that are non-treasure ships are being destroyed by the people who do not have the expertise to determine the difference between them."

On a national level, few laws protect historic shipwrecks and assure that the integrity of their contents will be preserved. Principles of federal admiralty law are designed to reward salvors. In the case of abandoned property, such as shipwrecks, the finder who makes a diligent effort at recovery may become the new owner. As a result, ships of historic value, as well as ships of monetary value, are subject to the possibility of salvage by those who are not necessarily interested in the ship's historic artifacts or trained in methods of preservation. Federal admiralty laws do not sanction salvaging methods which fail to safeguard items and invaluable archeological information associated with the artifacts saved. *Cobb Coin Company, Inc. v. The Unidentified, Wrecked Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1982). Nevertheless, many governmental officials associated with preservation efforts, along with concerned legislators, are using the passage of specific legislation to help assure the careful management of historic finds. Furthermore, it is appropriate to set standards at the federal level, as individual states are limited in their ability to legislate protection of finds because they cannot alter basic principles of admiralty law.

In states lacking adequate safeguards, a find such as the *Whidah* could be dismantled and sold without adequate analysis. For this reason, many legislators are pushing for national regulatory standards. The Proposed Abandoned Shipwreck Act of 1984 (H.R. 3194) was the direct consequence of a series of cases involving the U.S. Government, the State of Florida, and Treasure Salvors, Inc. over the ownership of the *Nuestra Senora de Atocha*. [See 1 *Water Log* 4 (October-December 1981) and 2 *Water Log* 3 (July-September 1982).] On January 3, 1983, Congressman Charles Bennett of Florida introduced H.R. 25, a bill similar to H.R. 3194. The bill has gone to two committees, the House Interior and Insular Affairs Committee and the House Merchant Marine and Fisheries Committee. At the time of writing of this article, no action had been taken on H.R. 25. For the purpose of discussion, this article will examine the key provisions H.R.

3194, which passed on the House floor but failed in the Senate last year, as they are indicative of Congressional perception of the problem."

H.R. 3194 would have given states title to certain abandoned shipwrecks within their territorial boundaries. It not only provided for a designation based on historical significance, but also clarified regulatory management authority over these vessels by permitting the states to exercise primary control over shipwrecks.

Originally, H.R. 3194 defined historic shipwrecks and structures on the basis of their eligibility by age for inclusion on the National Register of Historic Places. These included "sunken and abandoned ships and wrecks of the sea and any part of their cargo and other contents and sites, structures (including wharfs and bridges), objects, buildings, artifacts and implements of historical, archeological, scientific or educational interest". The purpose of the bill was to provide such ships with an exception from traditional laws of salvage. Subsequent amendments to H. R. 3194 deleted the phrase "of the sea" in order to ensure that the legislation covered all navigable waters. The amendments also allowed states to receive title to shipwrecks that are substantially buried in the submerged lands of a state or in coralline formations on submerged lands. Accessing wrecks of this type requires excavation tools. The language of the amendments would allow sport divers to explore shipwrecks, and simultaneously protect buried treasures from excavation. The rationale behind the distinction is that sport divers are unlikely to cause site damage by the use of excavation tools.

One feature that is necessary to assure the constitutionality of an historic preservation program is the existence of a rational plan for designating historically significant properties. Requiring the wrecks to be listed on the National Register meets this need. H.R. 3194 also contained a recording requirement to put the public on notice of a shipwreck's status. The recording requirement would not apply to wrecks which are substantially buried or in protected coralline formations, since their status is readily identifiable. Finally, another amendment to H.R. 3194 would reaffirm federal title to abandoned shipwrecks on federal land.

One of the key concerns of H.R. 3194 was to strike a balance between the private sector's rights to explore and recover lost vessels and public concern over the potential loss of a valuable record of our common heritage. The House bill was not intended to totally preclude recovery of abandoned shipwrecks by the private sector. Instead, it was designed to ensure that shipwrecks of exceptional historical value would be preserved, while also allowing for access to the historic vessels by permitting controlled recreational and educational exploration of shipwreck sites.

To achieve a balance of interests, the bill directed the President's Advisory Council on Historic Preservation, in consultation with public and private interests, to develop guidelines for carrying out the responsibilities of the legislation. The legislation would create a forum for cooperation between the states and the private sector in identifying, recovering, and preserving significant shipwrecks.

In the case of the substantial *Whidah* find, it is fortunate that Barry Clifford, the salvor of the ship, treats the preservation of his find with a high degree of professional care. It is also fortunate that his find is located in a state that has established a program to oversee the salvage of historic finds. Clifford envisions a museum to house his find, and has enlisted the assistance of trained archeologists to analyze and preserve it. Before he began digging, he got a permit from the Massachusetts Board of Underwater Archeology. He continued to cooperate with Massachusetts state agencies during salvage operations.

Heightened publicity over the recent dramatic find of the *Whidah* will undoubtedly prompt Congress to focus its attention on the significance of historic shipwrecks. Without uniform federal standards, the fate of irreplaceable finds rests on the integrity of the salvor and the interest of the individual states in their cultural heritage.

Greg Winters
Cornelia Burr

*Editor's note: The Abandoned Shipwreck Act (S. 676) was introduced in the U.S. Senate in mid-March, as a companion bill to H.R. 25.



MISSISSIPPI HISTORIC PRESERVATION LAW (Continued from page 3)

It seems that the best solution to this lack of standards must be through effectively drafted ordinances by the local authorities. Unfortunately, local efforts to draft such ordinances have not made much headway in the coastal counties of Mississippi. According to the Department of Archives and History, the city of Pass Christian has been the most active in this area. Although Pass Christian has no "historic district" ordinances, the city did adopt zoning ordinances to protect some of its historic structures, almost ten years ago. However, these ordinances are vague and probably would be unenforceable if challenged. In efforts to revise them several years ago, the city's planning commission indicated to the Department that the Natchez historic district ordinances would be used as a model for Pass Christian. The Department, however, is of the opinion that the Natchez ordinances suffer from the same vagueness.

The Division of Historic Preservation (Department of Archives and History) has developed a carefully-drafted example of historic district ordinances to assist local governments in their preservation endeavors. The sample ordinances conform to the requirements of the Mississippi Local Government Historic Preservation Act of 1978, and are thorough, complete with definitions and standards, and meet the constitutional requirements for notice and hearing. This document has been supplied to Pass Christian, and will be under consideration by the city planning commission in the near future.

Catherine L. Mills

FEDERAL PRE-EMPTION OF STATE HISTORIC SHIPWRECK POLICIES

Introduction

Under the U.S. Constitution (art. 3), the law of maritime salvage is controlled by federal admiralty principles. However, some coastal states have passed their own legislation establishing programs to safeguard historic shipwrecks within their territorial waters. Because such legislation involves an area of law that is constitutionally under federal control, the issue of what type of state program does not contravene federal admiralty law is crucial to the legal validity of the program. As this article will show, no clearcut guidelines have been established by federal courts in examining state initiatives.

Federal Salvage Law

The general policy behind federal maritime salvage law is to encourage seamen to render prompt service in emergencies, to engage in the difficult and often dangerous work of salvage, and at the same time discourage theft from the vessel. Thus, the law allows liberal awards to salvors from the sale of the salvaged goods. Such awards are *not* considered as recompense for salvor's labor, however.

There are three elements to salvage law: (1) the ship must be in maritime peril, (2) the salvor's acts must be voluntary, and (3) the salvage efforts must be at least partially successful in rescuing the property. *Platoro Ltd, Inc. v. Unidentified Remains, Etc.*, 614 F. 2d 1051 (5th Circuit, 1980). Furthermore, salvors have a legal duty to act with diligence in their salvage operations. With regard to the provision that the act must be voluntary, salvors with a legal duty to act in an emergency are precluded from receiving awards. The crewmen of an imperiled ship, for example, may not recover an award, as they have a pre-existing legal duty to the owner. An owner or agent in possession of a ship in peril may refuse offers of salvage; once this property is abandoned, however, it may be salvaged by anyone.

Traditional negligence principles of admiralty law discourage the reckless destruction of property, but these principles revolve around a standard of ordinary care. In other words, the negligence standard in itself does not mandate high standards of performance in the area of historic shipwreck salvage. Under current federal law, ships of historic value are subject to salvage by anyone, regardless of their technical expertise in recovery and preservation. Furthermore, only damage caused by gross negligence (that is, want of even scant care) can bring about complete forfeiture of an award. This is a very limited disincentive for unskilled salvors to attempt to recover a wreck when they lack the appropriate skills or equipment to do so.

State Salvage Law

As of 1983, twenty-six states had passed legislation concerning shipwrecks. Florida, Texas, Massachusetts, and Mississippi are discussed herein as examples of such legislation. These states base their authority to regulate shipwrecks on their traditional police powers to regulate the "public health, safety and welfare" of the citizenry. Nevertheless, states are limited as to the extent to which they may exercise their police powers in setting up preservation programs; states may *not* abridge federal admiralty principles.

Generally, state preservation Acts contain a

statement of purpose which spells out the public benefits of preserving and protecting historic sites, including sunken and abandoned ships. A typical shipwreck Act also delegates rulemaking authority to appropriate state agencies to carry out the policy of the state regarding the preservation or salvage of "historic shipwrecks." These agencies are usually authorized by law to enter into contracts with private organizations or individuals for salvage or restoration of historic sites.

Florida's shipwreck legislation has been a major source of litigation over its validity because of conflicts with federal admiralty law. [Fla. Stat. Ann. §§267.011-114 (West 1983)]. Thus, Florida's is one of the few state laws that has been scrutinized and tested in federal courts. Though the Florida law was passed in 1967, the state has been issuing salvage contracts since 1933 for its territorial waters. As of 1985, approximately 150 shipwrecks have been listed as landmarks in Florida. One such wreck (the *San Jose*) is also listed on the National Register of Historic Places.

Under the Florida Act, a potential salvor must obtain a license from the state before any excavation can begin on a site. The statute also set all salvage awards at a fixed rate of 75% to the salvor and 25% to the state. These provisions were successfully challenged in *Cobb Coin Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981), on the grounds that they violated federal admiralty law. The Fifth Circuit Court of Appeals ruled in this case that the Florida law was in violation of federal admiralty law because the state's salvage license requirement interfered with the admiralty principle of freedom of navigation. Furthermore, the court found that a Florida-licensed salvor on the wreck was not conducting diligent salvage efforts as required by admiralty law. Finally, the court found that the fixed rate for salvage awards in the state law was inflexible and inconsistent with the admiralty policy of providing liberal awards in order to promote salvage efforts.

Since *Cobb Coin*, Florida has begun negotiating salvage awards with individual salvors. Florida's contracts now contain a clause requiring diligent salvage efforts—a phrase which is defined in the contract. The licensing provision that was found to interfere with freedom of navigation is now only effective in state waters.

Texas also has a comprehensive legislative scheme for protecting historic shipwrecks. Tex. Nat. Res. Code Ann. §§191.001-179 (Vernon 1985). Since the Texas law was passed in 1967, 1700 wrecks have been identified, and 653 have been designated as historic shipwrecks. It is state policy to leave the wrecks in the water and remove only a small portion of artifacts from each wreck as a diagnostic sample of its contents. While Texas allows private salvors to contract for salvage rights, it has entered into only two salvage contracts since the law was passed. Texas' policy is to negotiate contracts with each individual salvor concerning the split of artifacts. Because this arrangement is not an "arbitrary" or "inflexible" rate, it is probably within the bounds of federal admiralty principles as interpreted by the court in *Cobb Coin*. Texas law also prohibits excavation without a permit. A similar provision in Florida was found to interfere with "freedom of navigation of the seas." *Cobb*

Coin, *supra*. This issue has not yet been adjudicated in Texas, however.

Since Massachusetts' enactment of shipwreck preservation legislation in 1973, seven permits have been issued for the excavation of wrecks, including the recent excavation project on the *Whidah*. Mass. Gen. Laws Ann. Ch. 6 §§179-180 (West 1984). This pirate ship dates back to 1717, and is an extremely important archeological find, being the only pirate wreck found to date in U.S. territorial waters.

The Massachusetts law vests title in the state to all wrecks in its territorial waters. Authority to carry out the policies of the Act is delegated to a state agency, which is granted a good deal of latitude in developing regulations for excavation. At the time of writing, regulations have been written, but are not yet in effect. These regulations require a permit for conducting activities at an archeological site. The law also requires a 75-25% split of artifacts between salvors and the state, just as Florida's statute once required. The Massachusetts law has not been tested on its merits because Massachusetts, unlike Florida, successfully exerted a claim of sovereign immunity under the Eleventh Amendment of the U.S. Constitution in *Maritime Underwater Surveys, Inc. v. Unidentified, Wrecked, and Abandoned Sailing Vessel*, 717 F. 2d 6 (1983). (See later discussion of this case.)

In 1983, Mississippi enacted shipwreck legislation similar to that of other states who claim title to all sunken and abandoned ships of the sea. (This legislation is described in the article entitled "Mississippi Historic Preservation Legislation", in this issue.) The Act forbids salvage or excavation without a permit, and allows salvage contracts to be made by the state with state agencies, institutions or qualified private institutions, corporations, or individuals. Unfortunately, Mississippi's provision may be found in conflict with the federal admiralty principle of freedom of navigation as in *Cobb Coin*.

Regarding the salvage award, Mississippi law provides for fair compensation to salvors in terms of a percentage of the reasonable cash value of the items recovered or, at the discretion of the Board of Trustees of the Mississippi Department of Archives and History, a fair share of objects recovered. This scheme allows for a flexible system of salvage awards, as required by federal admiralty law.

Current Issues

Examining the problems inherent in the legislative efforts of coastal states in preserving historic shipwrecks, it is apparent that states can minimize constitutional challenges by making careful accommodations to federal admiralty principles. Case law reveals that states may pass laws which "incidentally affect maritime affairs," provided the state action "does not contravene any Acts of Congress, nor work any prejudice to the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations." *Askew v. American Waterways Operators*, 411 U.S. 325, 36 L. Ed. 280, 93 S. Ct. 1590 (1973).

To avoid problems such as were faced by Florida in *Cobb Coin*, state contracts should

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FEDERAL PRESERVATION LAW

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Archeological Resources Protection Act of 1979

The purpose of the Archeological Resources Protection Act is to protect archeological resources and sites on public and Indian lands. It sets up a permit system for the excavation or removal of archeological resources located in such lands. A permit can be issued by the appropriate federal land manager only if (1) the applicant is qualified to carry out the activity, (2) the activity is for the purpose of furthering archeological knowledge in the public interest, (3) the resources removed or excavated will remain the property of the U.S., (4) copies of data documenting the find will be preserved by a suitable entity, and (5) the activity is consistent with any applicable public land management plan. Upon written request of the Governor of any state, a permit can be issued for the purpose of conducting archeologic research on behalf of the state or one of its educational institutions.

Criminal penalties are established for removing or excavating archeological resources without a permit and for trafficking in illegally removed resources. A first offense is punishable by up to a \$10,000 fine and/or a year's imprisonment. Subsequent convictions can result in fines up to \$100,000 and/or imprisonment for up to 5 years. If the value of the resource involved and the cost of restoration is greater than \$5,000, a first offender could be imprisoned a maximum of 2 years and fined a total of \$20,000. Anyone who violates a permit or begins work without a permit is subject, after notice and opportunity for a hearing, to civil penalties, the amount to be assessed on a case-by-case basis.

The Antiquities Act of 1906

One of the earliest federal preservation enactments still in force today is the Antiquities Act of 1906. 16 U.S.C.A. §§431-33 (West 1974 & West Supp. 1984). It authorizes the President to designate landmarks of historic or scientific interest as National Monuments. National Monuments must be on federally owned or controlled lands and are limited to the smallest amount of area necessary to protect the resource. Once designated, a Monument is managed by the federal agency having jurisdiction over the land. That agency is authorized to issue permits for scientific research of resources located on National Monument property. One who has received a permit under the Archeological Resources Protection Act does not have to apply for an Antiquities Act permit. National Monuments can be established on private land if such land is donated to the Department of Interior for that purpose.

The Reservoir Salvage Act

The Reservoir Salvage Act originally required the Interior Department to survey areas affected by proposed dam construction in order to salvage archeological resources. 16 U.S.C.A. §469 (West 1974 & West Supp. 1984). It was amended in 1974 to include any direct, federally licensed, or federally assisted activities that could cause the irreparable loss of significant scientific, historic, pre-historic, or archeologic data. Partial funding for the salvage work is to be provided from the monies appropriated for the construction project.

Conclusion

The statutes mentioned above and other related legislation such as the National Environmental Policy Act and the Department of Transportation Act of 1966 are indicative of the federal government's interest in preserving symbols of our national heritage. Unfortunately, they are not sufficiently comprehensive to protect our many and varied cultural resources. For instance, very little protection is mandated for privately owned resources. Even federal-owned properties listed on the National Register are not fully protected; the procedural requirements offer little substantive protection in the face of strong pro-development pressures. Nonetheless, these laws do represent tools that can be utilized by those who are genuinely concerned with preservation of our rich heritage.

Casey Jarman

ALABAMA HISTORIC PRESERVATION LAW

(Continued from page 2)

importance of the authorities seems to lie in their power to issue bonds from which to fund the preservation activities of other organizations.

Local Preservation Initiatives

In addition to state enactments, Alabama's political subdivisions play an important role in historical preservation. The City of Mobile provides an excellent example of municipal initiatives to protect historical properties. Citizens groups are primarily responsible for calling the city's attention to historically significant properties by applying for a permit to take action leading to the nomination of the property to the National Register. The city then sets up an architectural review board to aid the group in determining if the property is worthy of such nomination. The review board aids the property owner in qualifying the structure for entry in the Register by suggesting renovation techniques and providing blueprints of the necessary architectural characteristics the structure must have to meet the Register's criteria. At this time, the city may prohibit the demolition of a structure for a period of six months, during which time a purchaser is sought who will make the renovations, if the owner himself is unwilling to do so.

Mobile's zoning ordinances also function as protection for historic properties. For example, the city may pass ordinances forbidding the alteration of the historic character of an area by defining the characteristics that the properties must possess to ensure the architectural integrity of that area. An example of this is the requirement that in a single-family dwelling district, the front and side yards must be specified widths and lengths. It may also be required that the exteriors of houses be painted a particular color, and that certain architectural characteristics (such as antebellum columns) remain in place.

Furthermore, the city may create Preservation Districts to protect the overall character of the area. An example is the Old Dauphin Way District. The Mobile Historic Preservation Commission oversees both the preservation and the historic projects in its limited capacity, cooperating with the appropriate governing authority overseeing the National Register in the seven historic districts in the Mobile area. One of the commission's most recent projects (undertaken in conjunction with the

University of South Alabama) is the raising of the slave ship, *Clotie*, from the Alabama River.

David Sabine

FEDERAL PRE-EMPTION POLICIES

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require diligent salvage efforts, defining diligence in the contract. This definition might also state that salvage efforts which are not conducted in accordance with archeological standards are not diligent. States with a non-excavation policy (which, incidentally, forestalls the problem of preserving salt-infested wrecks on land) may also run afoul of the requirement for diligent salvage.

In addition, the problem of safeguarding "freedom of navigation of the seas" is a thorny one for states interested in developing historic shipwreck legislation that is consistent with federal admiralty law. State legislation that requires a license or permit before salvage operations may begin are imposing a restriction on salvors. Whether, under the test set up in *Askeew*, the state is interfering with the "proper harmony and uniformity" of international and interstate relations is a question that has not been resolved in a clear fashion. In *Cobb Coin*, a permit provision in Florida was struck down as an impermissible interference with freedom of navigation. Other state provisions to this effect have not yet been litigated. One legislative solution to this problem would be for the United States Congress to pass legislation giving the states title to historic wrecks within their territorial waters. (See article in this issue on Historic Shipwreck Legislation.)

Finally, it should be noted that notwithstanding the conflicts with admiralty law, a state may be able to avoid having its legislation tried on its own merits by asserting Eleventh Amendment rights of sovereign immunity. States that have not waived this right may be able to use it in circumvention of a direct challenge to its laws. The reason that Florida was unable to do this in *Cobb Coin* was that the state itself initiated legal proceedings. Thus, Florida was deemed to have waived its Eleventh Amendment rights.

Massachusetts, on the other hand, waited for salvors to begin *in rem* proceedings to claim a vessel in *Maritime Surveys, Inc., supra*, and was able to successfully assert an Eleventh Amendment claim. Courts are reluctant to find an implied waiver of sovereign immunity rights; thus, if a state takes no action that constitutes a waiver, the state may be free to assert sovereign immunity.

Conclusion

In light of the lack of clearcut guidelines for states to establish shipwreck preservation laws that will withstand challenges on the grounds of contravening the supremacy of federal law, legislation at the federal level to clarify states' rights is desirable. It is clear that traditional principles of admiralty law as they relate to salvage do not adequately assure that salvage operations for historic shipwrecks are conducted in a fashion that minimizes damage to significant finds. In the absence of federal guidelines, the states are free to organize preservation programs, but, as shown above, the extent of their authority over historic shipwrecks is fraught with ambiguity.

Greg Winters
Cornelia Burr

WATER LOG

This newsletter is a quarterly publication reporting on legal issues 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 Interior Department claims that the Army Corps of Engineers' plans to compensate for wetlands destroyed during construction of the Tennessee-Tombigbee Waterway are insufficient. The Department's Fish and Wildlife Service believes that 95,500 acres of mitigation lands must be set aside in order to compensate adequately for the wetlands destroyed by the project. The Corp's compensation plan allows for only 46,800 acres of mitigation lands to be used solely for wildlife habitat purposes. The dispute has been submitted to the Council on Environmental Quality, which has been given the responsibility under NEPA of mediating interagency disagreements over proposed major federal projects with potentially adverse environmental effects.

The Sea Grant Legal Program welcomes back Catherine Mills from her year's fellowship with the National Advisory Committee on Oceans and Atmosphere (NACOA) in Washington, DC. Dr. Mills is serving as Interim Director of the Legal Program.

On February 28, 1985 the Environmental Protection Agency (EPA) published proposed regulations governing the issuance of permits for at-sea incineration of liquid hazardous wastes. [50 Fed. Reg. 8222 (Feb. 28, 1985)] The purpose of the rulemaking is to establish an ocean incineration permitting process, including specific criteria to be used by the EPA in reviewing and evaluating ocean incineration permit applications. The proposed regulations also address the designation of ocean incineration sites. Comments (due by May 29, 1985) should be sent to: Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M St. S.W., Washington, DC 20460.

Two public hearings on the regulations were held in this area: April 23 at the Council Chamber of City Hall, 1300 Perdido, New Orleans, LA 70112; and May 2 at the Mobile Municipal Auditorium, West Exhibit Hall, 401 Auditorium Dr., Mobile, AL 36601.

On February 13, 1985, the Mississippi Commission on Natural Resources awarded a 2-year lease to Sapphire Petroleum Holdings, Inc., for 20,307 acres of state-owned waterbottoms south of Ship Island. The company plans to drill an exploratory well in that area during the fall of this year.

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