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[nationalaglawcenter.org](http://nationalaglawcenter.org) | [nataglaw@uark.edu](mailto:nataglaw@uark.edu) | [@nataglaw](https://twitter.com/nataglaw)

States' Wetlands Permitting Statutes:

*Mississippi*



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# A National Agricultural Law Center Research Publication

## States' Wetlands Permitting Statutes: Mississippi

### MS Code Tit. 49, Ch. 27

*The Statutes and Constitution are current with laws from the 2024 Regular, First, and Second Extraordinary Sessions effective through July 1, 2024.*

#### **MS Code § 49-27-1. Title and citation of chapter.**

This chapter is to be known as the "Coastal Wetlands Protection Act" and may also be cited by its common or popular name of "Wetlands Act."

#### **MS Code § 49-27-3. Public policy declared.**

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

#### **MS Code § 49-27-4. Danzler Tract in the Pascagoula River Marshes in Jackson County, Mississippi, designated the "Secretary of State Eric Clark Coastal Preserve."**

(1) The Mississippi Department of Marine Resources is authorized and directed to designate the Danzler Tract, nine hundred twenty-five (925) acres located in the Pascagoula River Marshes in Jackson County, Mississippi, acquired in 1997 with funds obtained by Secretary of State Eric Clark as trustee of the public trust tidelands and part of the Mississippi Coastal Preserves Program, as the "Secretary of State Eric Clark Coastal Preserve" in honor of his role in the development of the program.

(2) The Mississippi Department of Marine Resources in conjunction with the Office of Secretary of State are further authorized to erect appropriate markers and signs indicating the location of the "Secretary of State Eric Clark Coastal Preserve" and other pertinent information on the mission, trail systems and visitor guidelines relating to the Mississippi Coastal Plain.

#### **MS Code § 49-27-4.1. "Big Island" located at 0 Mouth of Back Bay of Biloxi in Harrison County, Mississippi, designated "Gollott Island."**



(1) The Mississippi Department of Marine Resources is authorized and directed to designate the "Big Island", 57 acres located at the physical address of 0 Mouth of Back Bay of Biloxi in Harrison County, Mississippi, as "Gollott Island" in honor of the role of Senator Thomas A. Gollott in the development of the Mississippi Gulf Coast. Big Island is more particularly described as Patent No. 1211672 Big Island Lot 2 of Section 22-7-9 A Swamp and Overflowed land located at the mouth of the Back Bay of Biloxi. The Mississippi Department of Marine Resources is further authorized and directed to designate the breakwater improvements on the south side of the island as "Godfather Point".

(2) The Mississippi Department of Marine Resources in conjunction with the Office of the Secretary of State are further authorized to erect appropriate markers and signs indicating the location of "Gollott Island" and "Godfather Point" and other pertinent information on the mission, trail systems and visitor guidelines relating to the Mississippi Coastal Plain.

### **MS Code § 49-27-5. Definitions.**

(a) "Coastal wetlands" means all publicly-owned lands subject to the ebb and flow of the tide; which are below the ordinary high water mark; all publicly-owned accretions above the ordinary high water mark and all publicly-owned submerged water-bottoms below the ordinary high water mark and includes the flora and fauna on the wetlands and in the wetlands.

(b) "Department" means the Department of Marine Resources.

(c) "Regulated activity" means any of the following activities:

(i) The dredging, excavating or removing of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetland;

(ii) The dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands;

(iii) Killing or materially damaging any flora or fauna on or in any coastal wetland;

(iv) The erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and

(v) The erection of any structure or structures on suitable sites for water dependent industry.



(d) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands.

(e) "Executive director" means the Executive Director of the Department of Marine Resources.

(f) "Filling" means either the displacement of waters by the deposition into coastal wetlands of soil, sand, gravel, shells or other material; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.

(g) "Person" means any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality or political subdivision, or any other corporation of any character whatsoever.

(h) "Commission" means the Mississippi Advisory Commission on Marine Resources.

(i) "Water dependent industry" means those commercial, industrial or manufacturing activities which, for purposes basic to their existence must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast. "Suitable sites for water dependent industry" means those areas of land which are suitable for the development of water dependent industry because of their proximity to waters of navigable depth, size and configuration, topography, soil conditions and access to other means of transportation. After consultation with local governments, port authorities, development commissions, port and harbor commissions and other interested parties, and after full consideration of zoning ordinances duly adopted by local governments, the department shall designate those sites it deems suitable for water dependent industry. The definition of "suitable sites for water dependent industry" shall be limited to, but not necessarily inclusive of, waterfront sites owned by county port authorities, development commissions and port and harbor commissions, and to areas that are now or are later made to be within one thousand (1,000) feet of the centerline of any natural or maintained channel having a depth of seven (7) feet or greater at mean low water. However, additional sites may be included in the definition of suitable sites for water dependent industry with the concurrence of the board of supervisors in the county affected.

(j) "Ordinary High Water Mark (OHWM)" means a mark on the shore determined by the department staff, established by fluctuations in water level and indicated by physical and biological characteristics including, but not limited to, water stains, changes in the character of the soil,



scour lines, presence of debris lines, changes in plant communities and other appropriate means that consider the characteristics of the surrounding area. The determination of OHWM shall not be made by the department staff during high tide where the above referenced characteristics are not observable. OHWM is not the same as mean high water and shall not be used for determination of the boundary between private property and public trust tidelands or for any purpose other than regulated activity as defined in this section.

### **MS Code § 49-27-6. Marinas; classification.**

For purposes of this chapter, the following terms shall have the meanings ascribed to them in this section:

(a) "Marina" means a facility providing more than twelve (12) mooring spaces for boats that may provide supplies and services including electricity, fresh water, fuel or sewage collection facilities.

(b) "Public marina" means a marina that offers mooring spaces and docking facilities for lease by the general public. Public marinas include recreational and commercial marinas, and they require a "C" for commercial or "I" for industrial use designation.

(c) "Private single-family or multi-family pier" means a pier that is part of an adjacent single-family home subdivision or multi-family condominium or apartment development that provides mooring spaces and docking facilities restricted for use by only home owners or tenants of the adjacent development. Private single-family and multi-family piers with twelve (12) or fewer mooring spaces are compatible with a "G" for general use designation. Private single-family and multi-family piers with more than twelve (12) mooring spaces require a "C" for commercial use designation. Commercial vessels may not be moored in a multi-family pier.

(d) "Yacht club marina" means a marina that restricts mooring spaces and docking facilities to members only of a private association organization. Yacht clubs require a "C" for commercial or "I" for industrial use designation.

### **MS Code § 49-27-7. Chapter inapplicable to certain activities, areas and entities; exempt activities, areas and entities to adhere to declared public policy; exempt entities to notify commission of activities.**

This chapter shall not apply to the following activities, areas and entities:



- (a) The accomplishment of emergency decrees of any duly appointed health officer of a county or municipality or of the state, acting to protect the public health;
- (b) The conservation, repletion and research activities of the Commission on Marine Resources, the Mississippi Gulf Coast Research Laboratory, the Commission on Wildlife, Fisheries and Parks, and the Mississippi-Alabama Sea Grant Consortium when acting through the Mississippi Universities Marine Center;
- (c) Hunting, erecting duck blinds, fishing, shellfishing and trapping when and where otherwise permitted by law;
- (d) Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands;
- (e) The exercise of riparian rights by the owner of the riparian rights, if the construction and maintenance of piers, boathouses and similar structures are constructed on pilings that permit a reasonably unobstructed ebb and flow of the tide. The riparian owner may reasonably alter the wetland at the end of his pier in order to allow docking of his vessels;
- (f) The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of this chapter, and all interstate highways planned but not yet under construction; and financed in part by Federal Interstate Highway Trust Funds;
- (g) Wetlands developed in the future by federal, state or county governments for the establishment of a superport or a pipeline buoy terminal for deep-draft, ocean-going vessels, including but not limited to, wetlands adjacent to Petit Bois Island and the Bayou Casotte Channel in Jackson County, Mississippi;
- (h) The Biloxi Bridge and Park Commission, Biloxi Port Commission, Long Beach Port Commission, Pass Christian Port Commission, Pascagoula Port Commission, and any municipal or local port authorities;
- (i) Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954;
- (j) Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi;



- (k) Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi;
- (l) The Fisherman's Wharf in Biloxi and the Buccaneer State Park in Hancock County;
- (m) Wetlands conveyed by the state for industrial development thereon pursuant to Section 211, Mississippi Constitution of 1890, and pursuant to Section 29-3-61, Mississippi Code of 1972;
- (n) The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction;
- (o) The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction;
- (p) The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction;
- (q) The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction; and
- (r) In the case of regulated activities which, in the judgment of the director or his delegate, after an on-site inspection, have no harmful impact on the environment and which make no substantial change in the wetlands, the director may issue a certificate of waiver, and no permit shall be required.

All activities, areas and entities exempt from the regulatory provisions, whether by name or reference, when carrying out what would otherwise be regulated activities in coastal wetlands shall at all times adhere to the policy as set forth in Section 49-27-3. Each entity shall notify the commission of all such activities so that the commission may be fully advised of all activities in the coastal wetlands.

**MS Code § 49-27-9. Permit required to conduct regulated activity; filing and form of application; fee.**

- (1) No regulated activity shall affect any coastal wetlands without a permit unless excluded in Section 49-27-7. Any person proposing to conduct or cause to be conducted a regulated activity shall file an application for a permit with the commission in such form and with such information as the commission may prescribe. An application fee in an amount of Fifty Dollars (\$50.00) for residential type regulated activity and Five Hundred Dollars (\$500.00) for commercial and industrial type related activity shall accompany each application and shall be payable to the commission. No permit shall be required for a regulated activity as defined in Section 49-27-5(c)(v) if



such activity is an activity by a water dependent industry, nor shall a permit be required pursuant to Section 49-27-5(c)(v) of any individual who seeks to construct a home, fishing camp or similar structure on his own property.

(2) If the commission determines that the activity, area or entity is exempt or requires no permit, and that the activity, area or entity complies with the notification requirement and the coastal wetland policy as required under Section 49-27-7, the commission may reduce the application fee by fifty percent (50%).

### **MS Code § 49-27-11. Application; contents.**

(1) A complete application shall include the following:

(a) The name and address of the applicant;

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

(c) A detailed description of the proposed activity and a map, drawn to an appropriate and uniform scale showing by section, township and range, or by latitudinal and longitudinal coordinator, the location and area of the coastal wetlands to be affected, indicating the location and area of existing and proposed fill, excavation or other regulated activities; showing the location, width, depth and length of any proposed channel and dredge spoil disposal site; showing all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways and related appurtenances or facilities, including those on adjacent uplands; describing the type of equipment to be used and the means of equipment access to the activity site;

(d) An estimate of the cost of the activity;

(e) The primary and secondary purposes of the project, including contemplated future projects;

(f) A description of any public benefit to be derived from the proposed project dependent upon the proposed activity;

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



(h) The completion date of the proposed activity and of the project dependent upon the activity;

(i) An appropriate written report or statement of the environmental impact of the proposed regulated activity and of the final project dependent on it upon the affected coastal wetlands and the life dependent upon them, provided that an environmental impact statement treating the same activity in the same area and supplied to another federal or state agency for considering a permit shall satisfy this requirement if submitted by the applicant; and

(j) A certification that a permit from the Mississippi Commission on Environmental Quality has been applied for or that such permit is not required; that a permit from the United States Corps of Engineers has been applied for or that such permit is not required; that permits or other certificates of compliance with applicable municipal or county building codes and zoning ordinances have been applied for or are not required.

(2) If the applicant alters or amends the information provided in compliance with paragraph (c) of subsection (1) of this section, the review periods provided for in Sections 49-27-15 and 49-27-37 shall begin on the date that the new information is provided to the department. The date of receipt for a completed application begins on the date of the last amendment made in accordance to paragraph (c) of subsection (1) of this section.

(3) Any person filing an application to dredge an existing channel for navigational purposes shall complete an application for such activities in accordance with application procedures required in this section.

### **MS Code § 49-27-13. Application; copy may be mailed to parties.**

The commission may cause a copy of any application to be mailed immediately to the following parties:

(1) The chief administrative officer in the municipality or municipalities where any part of the proposed activity will be located;

(2) The president of the board of supervisors of any county where any part of the proposed activity will be located;

(3) The Executive Director of the Department of Wildlife, Fisheries and Parks;



(4) The county attorney of any county in which any part of the proposed activity will be located or in any county which may be affected by such activity;

(5) The district attorney of any judicial district in which any part of the proposed activity will be located or of any district which may be affected by such activity; and

(6) The Director of the Gulf Regional Planning Commission.

**MS Code § 49-27-15. Application; notice of date for filing objections; hearing and notice of hearing; payment of publication fees and costs of providing notice to public.**

(1)

(a) The department may schedule a hearing on any application; however, the department shall schedule a hearing on each application if, during the time period in which written objections are required to be filed, (i) a written request for a hearing is submitted by the applicant, or (ii) a hearing is requested or written objections are submitted to the application by a political subdivision, an agency, or five (5) or more persons affected by the application. At such hearing, any person may present oral or written comments on the application. Not later than sixty (60) days from the receipt of a complete application, the commission shall publish notice of the time period in which written objections to any application must be filed.

(b) The hearing must be held within twenty (20) days after the time period in which objections are required to be filed ends, unless a later date for the hearing is agreed to by all parties. Notice of the date on or before which objections must be filed shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper of general circulation in the county in which the affected wetlands are located. The last publication of such notice shall be made not more than seven (7) days prior to such date. The published notice shall describe the site of the proposed activity and shall give a general description of the proposed regulated activity. Further, notice shall be given describing the date, time and place for the hearing by United States mail, postage prepaid, to each of the objectors and to the applicant at the address furnished to the commission by the parties, and by causing a copy of such notice to be published at least one time in one (1) newspaper having a general circulation in the county in which the affected wetlands are located.



(2) An applicant shall pay the publication fees and the costs of providing notice to the public.

**MS Code § 49-27-17. Application; notice to parties prior to date set for hearing; effect of failure to comply with section.**

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

(a) All of those parties who are entitled to receive a copy of such application in accordance with Section 47-27-13 of this chapter; and

(b) All known present owners of record of adjacent land as reflected by current tax assessment rolls and all known claimants to water or riparian rights in or adjacent to the coastal wetlands affected.

**MS Code § 49-27-19. Application; appearance at hearing by person filing objection; applicant's burden of proof and right to hearing.**

(a) Any person who files a written objection pursuant to Section 49-27-15 may appear at the public hearing and be heard.

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

**MS Code § 49-27-21. Public inspection of evidence, applications and related documents; record and transcription of oral testimony.**

Documentary evidence offered at hearings and all applications and related documents shall be open for public inspection at the office of the commission at reasonable times. Oral testimony shall be recorded and shall not be required to be transcribed except in the event of appeal.

**MS Code § 49-27-23. Commission authorized to grant, issue, reissue, modify, deny, suspend, revoke, limit, or condition permits; expressed public policy to be considered in connection with permits; acquisition of permits; resolution of conflicts.**

The commission may grant, issue, reissue, modify, deny, suspend or revoke permits and may prescribe limitations and conditions on permits. When taking such action on any permit, the commission shall consider the effect of the proposed activity with reference to the public policy expressed in Section 49-27-3 of this



chapter. A permittee under this chapter must obtain a permit from the Mississippi Commission on Environmental Quality if required by that commission under Sections 49-17-29 through 49-17-43, and nothing in this chapter is intended to waive the requirements and standards of such commission. A Mississippi Commission on Environmental Quality permit granted to an applicant under this chapter shall be proof of the applicant's meeting any water quality standard considered by the commission under this chapter. Any conflict under this chapter between the commission and the Commission on Environmental Quality shall be resolved in favor of the Commission on Environmental Quality. The commission may undertake studies regarding water quality and submit the results of such studies to the Commission on Environmental Quality.

### **MS Code § 49-27-27. Permits to dredge new channels; considerations and restrictions.**

In considering permits to dredge new channels by applicants under subsection (c) of Section 49-27-11, the commission shall take into consideration in addition to Section 47-27-23 the benefit of such channel to the public at large, or to surrounding landowners, and the extent of use projected for the channel, as well as the ecological, economic, commercial, recreational and aesthetic value of the wetlands affected. The commission shall, where practical, require applicants to use existing channels, so as to reduce the coastal wetlands affected.

### **MS Code § 49-27-29. Conditions or limitations may be imposed on grant or modification of permit.**

In granting or modifying any permit, the commission may impose conditions or limitations on the proposed activity designed to carry out the public policy set forth in this chapter. Permits shall be valid for not more than five (5) years from the date of issuance, except that permits issued to a governmental entity shall be valid for not more than ten (10) years. The commission may issue one (1) extension not to exceed two (2) years in length if the applicant requests it in writing before the expiration date of the permit.

### **MS Code § 49-27-31. Performance bond may be required.**

The commission may require a performance bond in an amount to be set by the commission with surety and satisfactory conditions securing to the state compliance with the conditions and limitations set forth in any permit.

### **MS Code § 49-27-33. Suspension or revocation of permit after notice and hearing.**



The commission, after reasonable notice in writing to the holder of a permit and after a hearing in the manner as provided in Sections 49-27-15 through 49-27-21 of this chapter, shall suspend or revoke a permit if it finds that the applicant has not substantially complied with one or more of the conditions or limitations set forth in the permit or has exceeded the scope of the activities as set forth in the application.

**MS Code § 49-27-35. Findings, reasons and descriptions to be recorded by council.**

The commission shall state, upon its record, its findings and reasons for all actions taken pursuant to Sections 49-27-23 through 49-27-37. When a permit is granted or modified, the commission shall describe the public interest to be served by granting or modifying the permit. When a permit or modification is denied, the commission shall describe the public interest which would be adversely affected by granting or modifying the permit.

**MS Code § 49-27-37. Copy of order in issuance, denial, revocation or suspension of permit to be sent to parties; time; extensions.**

(1) The commission shall send a copy of any order in issuance, denial, revocation or suspension of a permit to the parties stated in Section 49-27-17, and such orders must be sent within ninety (90) days from the receipt of a complete application, or within ninety (90) days from an amendment to the application as provided by Section 49-27-11(2), in the case of granting or denying or thirty (30) days from the date of the hearing in the case of suspension or revocation, unless an extension is requested as provided in subsection (2) and approved by the commission.

(2) An applicant may request, in writing, additional extensions up to ninety (90) days for the processing of an application.

**MS Code § 49-27-39. Appeal to chancery court; when council's order to be confirmed.**

(a) An appeal may be taken by the applicant, or any person or corporation, municipal corporation, county or interested community group who has been aggrieved by such order, from the denial, suspension or revocation of a permit or the issuance of a permit or conditional permit and who has filed written protest or objection as specified in Sections 49-27-9 through 49-27-21, within thirty (30) days after the mailing to the parties of the order of issuance, denial, suspension or revocation of any such permit, to the chancery court of any county having jurisdiction over the property which may be affected by any such proposed activity to be authorized by such permit.



(b) If the court finds that the order appealed from is supported by substantial evidence, consistent with the public policy set forth in this chapter, is not arbitrary or capricious and does not violate constitutional rights, it shall affirm the council's order.

**MS Code § 49-27-41. Appeal to chancery court; complaint; return date; cost bond; record; appeal with supersedeas.**

Such appeal shall be brought by a complaint in writing, stating fully the reasons therefor, signed by an authorized party, and shall be served at least twelve (12) days before the return date upon the commission and upon all parties having an interest adverse to the appellant as designated under subsection (a) of Section 49-27-39. Such appeals shall be brought to the next return day of the court after the filing of such appeal or may be returned to a day set by fiat of the court. A cost bond must be posted with sufficient sureties payable to the state in the sum of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), to be fixed in the order appealed from and to be filed with and approved by the executive director of the commission, who shall forthwith certify the same, together with a certified copy of the transcription record of the proceedings in the matter to the chancery court to which the appeal is taken, which shall thereupon become the record of the cause. An appeal to the chancery court as provided herein shall not stay the execution of an order of the commission. Any party aggrieved by an order of the commission may petition the chancery court for an appeal with supersedeas and the chancellor shall grant a hearing on the petition, and upon good cause shown may grant the appeal with supersedeas in which case the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor.

**MS Code § 49-27-43. Appeal to chancery court; service upon commission; certification of record.**

Upon the filing of an appeal, the clerk of the chancery court shall serve notice thereof upon the commission, whereupon the commission shall within sixty (60) days, or within such additional time as the court may for cause allow, from the service of such notice certify to the chancery court the record in the case, which record shall include a transcript of all testimony, all objections, all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the commission may stipulate that only a specified portion of the record shall be certified to the court as the record on appeal.

**MS Code § 49-27-45. Appeal to chancery court; when case to be referred back to commission.**

If, upon hearing such appeal, it appears to the court that any testimony has been improperly excluded by the commission or that the facts disclosed by the record



are insufficient for the equitable disposition of the appeal, it shall refer the case back to the commission to take such evidence as it may direct and report the same to the court with the commission's findings of fact and conclusions of law.

**MS Code § 49-27-47. Appeal to chancery court; precedence; powers of chancellor.**

Such appeal shall have precedence in the order of trial, and the chancellor may order the granting, denial, revocation, suspension or limitation of any permit or may remand to the council for such order.

**MS Code § 49-27-49. Appeal to Supreme Court.**

Appeals may be taken from the chancery court to the Supreme Court in the manner as now required by law, except that if a supersedeas is desired by the party appealing from the chancery court, he may apply therefor to the chancellor thereof, who shall award a writ of supersedeas without additional bond if, in his judgment, material damage is not likely to result thereby, but otherwise he shall require such supersedeas bond as he deems proper which shall be liable to the state or applicant for such damage.

**MS Code § 49-27-51. After-the-fact authorization for work upon proper application; civil and criminal actions; who may initiate.**

(1)

(a) If a person in violation of this chapter submit s a proper application for any unauthorized work and the commission determines that the work has been conducted in accordance with the public policy as set forth in Section 49-27-3, the commission shall issue after-the-fact authorization for the work.

(b) For conducting the work without first obtaining a current and valid permit and other violations of this chapter, the commission may order and levy a penalty of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) per day for each day the violation has existed for residential type regulated activity and a penalty of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00) per day for each day the violation has existed for commercial and industrial type regulated activity.

(2) If the person continues the violation, the Attorney General of the State of Mississippi at the request of the commission, a district attorney having jurisdiction, or a county attorney having jurisdiction may initiate the civil



or criminal actions, or both civil and criminal actions, as described in this chapter against the person.

(3) The Attorney General, commission, district attorney or county attorney may initiate action to enjoin any person in violation of this chapter.

### **MS Code § 49-27-53. Jurisdiction and venue for judicial actions.**

Jurisdiction and venue for judicial actions brought pursuant to this chapter shall lie in any county or counties in which the alleged violation occurs or in which property affected by such violation is located.

### **MS Code § 49-27-55. Civil liability of violators; restoration; punitive damages; mandatory injunction; jurisdiction of circuit or county court; remedies preserved.**

(a) Any person who performs or causes to be performed any activity regulated by this chapter for which a permit has not been obtained, violates any provision of this chapter, regulation promulgated pursuant to this chapter or any condition of a permit, shall be liable to the State of Mississippi for the restoration of all affected coastal wetlands to their condition prior to such violation, insofar as such restoration is possible, and for any and all damages to the wetlands. The appropriate chancery court by writ of mandatory injunction shall allow a reasonable time for completion of the restoration and may, in its discretion, order as punitive damages a sum not to exceed Five Hundred Dollars (\$500.00) per day for each day such violation has existed. The chancery court may further order as punitive damages a sum not to exceed Five Hundred Dollars (\$500.00) per day for each day that the violation exists beyond the date set by the court in its injunction for the restoration of the wetland. If injunctive relief is not sought, the appropriate circuit or county court shall have jurisdiction over any action for damages and/or punitive damages as set forth in this paragraph.

(b) Nothing in this chapter shall preclude other statutory or common law remedies by public or private parties against violators or nonviolators of this chapter.

### **MS Code § 49-27-57. Fines and penalties.**

(a) In addition to civil liability under this chapter, a violation of this chapter is a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1,000.00) or by imprisonment of not more than thirty (30) days, or both.



(b) In the case of continuing violations, each day shall constitute a separate charge; however, separate violations under this chapter need not be severed for trial when an identity of parties and location exists.

(c) It shall be a misdemeanor to materially harm or disturb scientific devices and recording instruments left in coastal wetlands by authorized agencies of the state or federal government, and a violation of this subsection shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment of not more than thirty (30) days or both.

### **MS Code § 49-27-59. Rules and regulations.**

The commission shall adopt, promulgate and publish rules and regulations for the implementation of this chapter. Before becoming effective, such rules and regulations, and any changes, must be published once a week for at least three (3) consecutive weeks in a newspaper having general circulation throughout the State of Mississippi. Such rules and regulations shall provide procedure whereby an individual or organization may receive at their own expense copies of the applications provided for in Section 49-27-13 of this chapter.

### **MS Code § 49-27-61. Charges for materials removed under permit; alternative for dredge material disposal.**

(1)

(a) The commission shall charge Fifty Cents (50¢) per cubic yard for any sand or gravel removed from wetlands and Twenty-five Cents (25¢) per cubic yard for any other materials removed from coastal wetlands by a permittee or his agent under the terms of any permit issued.

(b) There shall be no charge levied by the commission for the removal of one hundred (100) cubic yards or less of any material removed from wetlands by a permittee or his agent under the terms of any permit issued.

(c) The commission may waive these charges on any project of a governmental agency or any project wherein expenditures are made as the result of a governmental grant or governmental bond proceeds.

(d) Any party participating in the beneficial use of dredge materials programs under subsection (2) shall be exempt from these charges.

(2) The department shall require any party permitted to conduct dredging activities of over two thousand five hundred (2,500) cubic yards to participate in the department programs involving beneficial use of



dredge materials, provided the material is suitable and a beneficial use site is available. If approved by the executive director, or his designee, a party may deposit acceptable dredge materials in a designated location for a fee not to exceed fifty percent (50%) of the fair market cost to transport and dispose of the material in an approved upland site. The department shall consider in-kind services for offsetting depositional charges.

### **MS Code § 49-27-63. Inspections.**

The commission shall, from time to time, inspect the coastal wetlands to determine whether violations have been or are being committed. The commission or any authorized employee of the Department of Marine Resources may enter at reasonable times upon any private or public property in the performance of duty to enforce the Coastal Wetlands Protection Act.

### **MS Code § 49-27-65. Evaluation of coastal wetlands; charts; education of public; overall use plan.**

(a) To implement the policy set forth in the chapter and to assist in the protection of coastal wetlands, the commission acting with the cooperation and assistance of the Gulf Regional Planning Commission and the Gulf Coast Research Laboratory shall evaluate the coastal wetlands and prepare charts at an appropriate scale showing the distribution of coastal wetlands as defined in this chapter. These charts will be provided to the offices of the chancery clerk of affected counties and to the Gulf Regional Planning Commission. The charts will be updated and reissued periodically as needed to provide a current inventory of coastal wetlands.

(b) The commission shall promote the education of the public about scientific and economic knowledge concerning coastal wetlands.

(c) In recognition of the national policy expressed in the Coastal Zone Management Act of 1972, Public Law 92-583, the commission is directed to include an overall plan for use of coastal and private wetlands in the Mississippi Coastal Zone Management Plan being prepared by the commission. The commission is further directed to identify and include in such plan specific coastal and private wetlands which should be set aside as estuarine sanctuaries.

### **MS Code § 49-27-67. Exclusion from assessment for ad valorem taxes.**

Any coastal wetlands now assessed for ad valorem taxes against the abutting landowner shall be excluded from the assessment of the said landowner's property upon proper application being made as otherwise provided by law.



## **MS Code § 49-27-69. Disposition of fees and other sums.**

All fees and other sums received by the commission pursuant to this chapter shall be deposited to the credit of the "Seafood Fund".

## **MS Code § 49-27-71. Definitions; jurisdiction; penalties; standing; landowner permission revocable; notice; determination of ownership; derelict vessel removal; emergency removal; cost recovery; court process; department authorities.**

(1) Definitions. As used in the section, the following words and phrases have the following meanings unless the context clearly indicates otherwise:

(a) "Abandoned vessel" means a vessel left unattended for four (4) or more weeks after a hurricane, tropical storm or other natural event resulting in a declaration of emergency by the Governor, or, in the absence of a hurricane, tropical storm or other natural event resulting in a declaration of emergency by the Governor, any of the following:

(i) A vessel left unattended that is moored, anchored, or otherwise in the waters of the state or on public property for a period of more than ten (10) days.

(ii) A vessel that is moored, anchored, or otherwise on or attached to private property for a period of more than ten (10) days without the consent of the owner or lessee of the property or of the public trust tidelands.

Upon notification from the owner of the vessel outlining the circumstances following a hurricane, tropical storm or other natural event, the department may grant an exception to the time frames indicated above.

(b) "Department" means the Mississippi Department of Marine Resources.

(c) "Derelict vessel" means a vessel in the waters of the State of Mississippi that satisfies any of the following:

(i) Is aground without the ability to extricate itself absent mechanical assistance;

(ii) Is sunk or otherwise resting on the bottom of the waterway;



(iii) Is abandoned;

(iv) Is wrecked, junked, or in a substantially dismantled condition upon any waters of this state:

1. A vessel is "wrecked" if it is sunken or sinking; or remaining after a marine casualty, including, but not limited to, a boating accident, extreme weather, or fire.

2. A vessel is "junked" if it has been substantially stripped of vessel components, if vessel components have substantially degraded or been destroyed, or if the vessel has been discarded by the owner or operator. Attaching an outboard motor to a vessel that is otherwise junked will not cause the vessel to no longer be junked if such motor is not an effective means of propulsion.

3. A vessel is "substantially dismantled" if at least two (2) of the three (3) following vessel systems or components are missing, compromised, incomplete, inoperable, or broken:

(A) The steering system;

(B) The propulsion system; or

(C) The exterior hull integrity.

Attaching an outboard motor to a vessel that is otherwise substantially dismantled will not cause the vessel to no longer be substantially dismantled if such motor is not an effective means of propulsion;

(v) Docked, grounded, or beached upon the property of another without the consent of the owner of the property;

(vi) Is obstructing a waterway or within one hundred (100) yards of the boundaries of any state, county or municipal port;

(vii) Is endangering life or property;

(viii) Has broken loose or is in danger of breaking loose from its anchor, mooring, or ties; or

(iv) A vessel that is otherwise not seaworthy.



(d) "Documented vessel" means a vessel documented under 46 USC, Chapter 121.

(e) "Effective means of propulsion" means a vessel, other than a barge, that is equipped with:

(i) A functioning motor, controls, and steering system; or

(ii) Rigging and sails that are present and in good working order, and a functioning steering system.

A vessel does not have an effective means of propulsion for safe navigation within seventy-two (72) hours after the vessel owner or operator received telephonic notice, in-person notice recorded on an agency-approved body camera, or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from a representative of the department, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The department may adopt regulations to implement this paragraph.

(f) "Floating building or structure" means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.

(g) "Gross negligence" means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property to such conduct.

(h) "Moored" means a vessel that is anchored or affixed in some other way to the public trust tidelands, to leased tidelands, to private land, or within the riparian zone of a private or public landowner or leaseholder.

(i) "Registered" means a vessel documented under Section 59-21-5.

(j) "Unseaworthy" means a vessel that is not fit or safe for any normal perils of the sea or has no effective means of propulsion.



(k) "Vessel" means every description of watercraft, other than a seaplane, capable of being used as a means of transportation on the water. For the purposes of this section, vessels powered only by hand, foot, oars or paddles, are included.

For the purposes of this section, floatable buildings and structures, whether or not they are used for navigation, are included.

(l) "Waters of the state" means any waters located within Harrison, Hancock and Jackson Counties under the jurisdiction of the Mississippi Department of Marine Resources as established pursuant to Section 49-15-23.

(m) "Willful misconduct" means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) Jurisdiction.

(a)

(i) In the waters of Harrison, Hancock and Jackson Counties, a person, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel on the coastal wetlands, marine waters, or on public or privately owned lands without the owner's permission.

(ii) The Department of Marine Resources has the authority to remove derelict vessels, whether located on private or public property.

(iii) Vessels located in ports and harbors are subject to the provisions outlined in Title 50, Mississippi Code of 1972, Ports, Harbors, Landings and Watercraft.

(iv) Subparagraph (i) of this paragraph (a) does not apply to vessels located in marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(v) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions in Section 89-17-1 et seq.

(b)



(i) In all other waters of the State of Mississippi, a person, firm, corporation or other entity may not leave derelict or at risk of being derelict, any vessel in the wetlands, public waters or waterways or on public or privately owned lands without the owner's permission.

(ii) Subparagraph (i) of this paragraph (b) does not apply to vessels located in public or private marinas, garages or repair shops for repairs, improvements or other work with knowledge of the owner and for which the costs for such services have been unpaid.

(iii) Vessels deemed to be derelict pursuant to this chapter are exempt from the salvage provisions of Section 89-17-1 et seq.

(3)Penalties. Violations of this act will be subject to the penalties as provided in Section 49-15-63.

(4)Standing. A party with standing may initiate the derelict vessel procedures in this section. For purpose of this section, the following parties have standing:

(a) The owner of the property where the vessel came to rest or to which the vessel was made fast;

(b) Any harbormaster, police department, municipality or agent of the state that agrees to accept or process a derelict vessel; or

(c) Any professional marine salvager when the salvager is engaged by a person with standing.

(5)Landowner permission may be revoked at any time. The landowner must provide the department sufficient proof that the vessel owner has been notified of the revocation of landowner's permission or proof that the landowner cannot locate the owner of the vessel.

When a vessel that is not otherwise leased to another party is moored upon public trust tidelands for a period of thirty (30) days or longer, permission must be granted by the Secretary of State's Office.

(6)Notice. Any party with standing, or his or her representative, may initiate the notice process by filing an application with the department to remove the derelict vessel. Upon receipt and review of the application, the department may initiate the following notice process:



(a) A department officer is authorized to board any vessel that has been reported to the department as being derelict or at risk of being derelict to determine the condition of the vessel and in an attempt to establish ownership of the vessel.

(b) A department officer shall post notice, which must comply with the following requirements:

(i) Be posted on the vessel in a prominent location, visible to an approaching person;

(ii) Require the vessel owner to submit a plan for removal to the department within seven (7) days of the notice; and

(iii) Include a space for the owner of the vessel to respond.

(c) If the registered owner responds with a signature in the space or otherwise provides a written response to the department requesting an extension of time, then the registered owner will have an additional five (5) days to submit the plan for removal.

(d) The department will notify the respondent of the approval or denial of the removal plan within seven (7) business days.

(e) If the respondent fails to comply with the approved removal plan and fails to submit a satisfactory reason as to why the vessel cannot be moved as planned, the department may present the removal plan and evidence of the owner's noncompliance to the chancery court.

(f) Upon presentation of the required evidence, the chancery court will issue an order allowing the department or its representative to remove the vessel from its current location and make whatever disposition is deemed appropriate, including, but not limited to, immediate disposal, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(g) If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.

(h) Any party who acts in good faith and without malicious intent in the processing, storing or moving any derelict vessel pursuant to this section is immune from liability for damages to the vessel.

(7) Determining ownership.



(a) Upon receipt of an application for the removal of a derelict vessel where no removal plan has been submitted by the owner, the department must attempt to contact the registered owner of the vessel and any lien holders of record by other available means.

(b) The department must inquire of the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) as to the status of the vessel in regard to the Mississippi Boating Law of 1960, Section 59-21-1 et seq., or the United States Coast Guard as to the status of the vessel in regard to documentation under 46 USC, Chapter 121.

(c) The inquiry must provide the description of the vessel, including the vessel registration number.

(d) The MDWFP is required to provide the requested information to the department within two (2) business days.

(e) The registered owner of a vessel must comply with Section 59-21-21 to change ownership. In the event a vessel owner fails to notify the MDWFP of a transfer of ownership and supply the new owner's contact information, the owner of the vessel according to MDWFP records is presumed to be the person to whom the vessel is registered.

(f) If there is no registered owner found, the department must make publication on the department's website and in a newspaper with general circulation for three (3) weeks, describing the vessel and the location.

#### (8) Derelict vessel removal.

(a) After the initial notice period described in subsection (6) has lapsed and the department can show proof of inquiries to ascertain the vessel ownership under subsection (7) of this section, the department may obtain an order from the chancery court for the derelict vessel to be removed from its current location.

(b) The chancery court order may authorize the department to make whatever disposition is deemed appropriate, including, but not limited to, immediate disposal of the vessel, storage pending disposal, use for official purposes, transfer to another state agency or other disposition.

(c) If the vessel is located in an area of coastal wetlands where emergent vegetation is present or where the vessel is embedded in the ground, a wetlands permit may be required prior to removal.



(d) Any person who acts in good faith and without malicious intent in the processing, storing or moving of any derelict vessel pursuant to this section is immune from civil liability for damage to the vessel.

(9)Emergency removal. Any derelict vessel that is obstructing a waterway, is within any designated navigation channel or within one hundred (100) yards of the boundaries of any state, county or municipal port may be declared a hazard to navigation and subject to immediate relocation, removal disposal, or other disposition by the department or other party with standing.

(a) Any derelict vessel that is leaking any hazardous substances, chemicals or fuels will be reported to the Mississippi Department of Environmental Quality (MDEQ) and may be declared an environmental hazard and subject to immediate relocation, removal, disposal or other disposition by MDEQ, the department or other party with standing.

(b) The registered owner of a vessel removed in accordance with this subsection (9) is liable for the costs associated with the relocation, removal, salvage storage or disposal of the vessel and any damages to the flora and fauna within the affected area.

(c) Any funds derived from salvage or sale of a vessel pursuant to this section will be used to offset the costs to the department associated with the removal, salvage, storage or disposal of the vessel.

(d) Any funds derived from damages to the flora and fauna will be deposited into the Coastal Resource Management Fund if the Department of Marine Resources initiates the action.

(e) Any party who relocates or removes a vessel under this section is not liable for damages resulting from relocation or removal unless the damage results from gross negligence or willful misconduct.

(10)Cost recovery.

(a) The department may seek full cost recovery from the registered owner of the derelict vessel for any expense incurred as a result of, or incidental to, removing the vessel. The registered owner of the vessel is liable for the costs of removal, storage, disposal, and restoration of affected lands, attorneys' fees, and all court costs.

(b) The owner of the vessel is also liable for an administrative penalty of Five Hundred Dollars (\$500.00) per day. The penalty for emergency removal of vessels under subsection (9) of this section may be imposed by the Executive Director of the Department of Marine



Resources upon the recommendation of the Advisory Commission on Marine Resources, under Section 49-15-401 et seq. The fines for removal of all other vessels may be imposed by the chancery court.

(c) Expenses incurred, including, but not limited to, fines, court costs, vessel removal, storage, disposal, restoration of affected lands, and attorneys' fees for derelict vessels will be imposed by the chancery court as outlined in subsection (11) of this section.

(d) If the registered owner should fail to pay fines imposed by the department in accordance with paragraph (b) of this subsection, an enforcement action will be filed with the chancery court which may result in the court issuing an order, including, but not limited to, the collection of fines, court costs, and/or any legal avenue the court finds appropriate to collect such funds.

(e) All proceeds from any activity initiated by the Department of Marine Resources related to the disposition of a vessel under this chapter will go into the Derelict Vessel Fund, a special fund within the Seafood Fund. However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(11) Court process.

(a) The chancery court of the county in which the vessel is located has jurisdiction over all matters concerning derelict vessels under this section, including injunctions and demands for damages. If the vessel is allowed to float and/or is otherwise moved to another county after notice has been provided under subsection (6) of this section, the county in which the vessel was first provided notice shall have continuing jurisdiction.

(b) If there is no response to the publication attempts under subsection (7)(e) of this section, the chancery court will issue an order to the department allowing the department to take possession of the vessel and make such use or disposition of the vessel as deemed appropriate under the circumstances. If the department determines that the vessel may be used for official purposes or otherwise sold, the MDWFP will issue a vessel registration number or a hull identification number to the department after proof of publication has been submitted.

(c) The chancery court may, in its discretion, order damages up to Five Hundred Dollars (\$500.00) per day for every day the vessel was left abandoned or derelict, beginning on the day notice was posted on the vessel.



(d) If the department or a party with standing desires to require the registered owner to remove the vessel, then he or she may apply to the chancery court for a writ of mandatory injunction ordering the registered owner to remove the vessel. The chancery court must allow a reasonable time for removal and restoration of the affected lands. The chancery court may order further damages not to exceed Five Hundred Dollars (\$500.00) per day for each day that the violation exists beyond the date set by the court in an injunction for the removal of the vessel and restoration of the affected lands.

(e) Any court-ordered reimbursed costs or damages in excess of the actual costs of removal and restoration initiated by the Department of Marine Resources must be deposited in a special fund in the State Treasury known as the "Derelict Vessel Fund" within the Seafood Fund. Any funds deposited in the fund must be used to cover the administrative costs and removal costs incurred by the department for the removal of vessels. Any remaining funds must be used to cover the costs of removing additional derelict vessels. However, any fines imposed for the damage to coastal wetlands will be placed in the Coastal Resource Management Fund.

(12) Department authorities.

(a) The department is authorized to enter into contracts with individuals, firms and corporations, or agreements with other state agencies for the removal and/or temporary storage of vessels prior to removal. The salvage value, if any, of the vessel may be used to offset the costs of the removal of the vessel and the restoration of the affected area. The department may enter into noncompetitive contracts or agreements with any state or federal entity for the removal of vessels.

(b) The department may enter into interstate or intrastate agreements toward this end, and may seek and utilize aid from all federal, state, and local sources in this endeavor.

(c) The Department of Marine Resources shall adopt rules and regulations necessary and appropriate to carry out this section for actions falling within its jurisdiction.

(d) The department may promulgate regulations to establish a derelict vessel prevention program to address vessels at risk of becoming derelict. Such program may, but is not required to, include:



(i) Removal, relocation, and destruction of vessels declared a public nuisance due to the lack of proper marine sanitation, derelict or at risk of becoming derelict, or lost or abandoned.

(ii) Creation of a vessel turn-in program allowing the owner of a vessel determined by the department to be at risk of becoming derelict, to turn the vessel and vessel title over to the department to be destroyed without penalty.

(iii) Providing for removal and destruction or other disposition of an abandoned vessel for which an owner cannot be identified or the owner of which is deceased and no heir is interested in acquiring the vessel.

(iv) Purchase of anchor line, anchors, and other equipment necessary for securing vessels at risk of becoming derelict.

(v) Creating or acquiring moorings designated for securing vessels at risk of becoming derelict.

(e) The State of Mississippi, the Commission on Marine Resources, the Department of Marine Resources, and their employees and representatives shall not be liable for any damages resulting from the removal, towing, storage, sale or disposal of any vessel that is derelict or hazardous under this section.

(f) The department or any party with standing does not incur liability for any resulting damage to the vessel or any damage the vessel may cause to any property or person during the time frame between posting notice and vessel removal. If any damages occur during the period of time between notice and removal of the vessel, the registered vessel owner, according to MDWFP records, is presumed liable for all damages.

