
**TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES PART
23 RULES AND REGULATIONS FOR THE COASTAL WETLANDS
PROTECTION LAW AND THE MISSISSIPPI COASTAL PROGRAM**

Chapter 01 Purpose

- 100 Part 23 provides for the regulation of Coastal Wetlands and the implementation of state policy in the Coastal Zone.
- 100.01 Chapter 04, Chapter 05, and Chapter 06 detail the procedures for evaluating regulated activities.
- 100.02 Chapter 11 details the procedures for evaluating activities that are exempt from the requirement to secure a permit.
- 100.03 Chapter 12 details the procedures for resolving violations of the Coastal Wetlands Protection Act (CWPA).
- 100.04 Chapter 13, Chapter 14, Chapter 15, Chapter 16, and Chapter 17 detail the procedures for Federal Consistency review within the Coastal Zone.
- 100.05 Chapter 18 details the procedures for evaluating reviewable actions by state agencies.

Chapter 02 Justification and Authority

- 100 The Mississippi Commission on Marine Resources (Commission) has determined that the regulation of certain activities (regulated activities) within the Coastal Zone and associated coastal watersheds is necessary for the conservation and protection of the biological integrity of the Coastal Wetlands.
- 101 The Commission has determined that Coastal Wetlands, because they are integral to the health and productivity of commercially and recreationally important fish species, must be protected and maintained to the maximum extent practicable and that any authorized impacts to Coastal Wetlands must require compensatory mitigation at a sufficient level to replace any functionality lost to those authorized impacts.
- 102 The Commission has determined that suitable sites for water dependent industries must be reserved to the maximum extent practicable for the use of those industries.

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- 103 The Commission is authorized by MS Code Annotated (M.C.A.) § 57-15-6(1) and § 49-27-59 to prepare and implement a coastal program, hereinafter called the Mississippi Coastal Program (PROGRAM), that establishes guidelines and procedures pursuant to certain goals for reasonable industrial expansion, efficient utilization of waterfront industrial sites, conservation of the resources of the coastal area, consideration of the national interest, preservation of natural scenic qualities, assistance to local governments in the provisions of public facilities and services, and effective, coordinated implementation of public policy in the coastal area.
- 104 The Commission, in accordance with M.C.A. § 49-27-9, has determined that any party proposing to conduct or cause to be conducted a regulated activity must file an application for a permit with the Commission.
- 105 The Commission is authorized by M.C.A. § 49-27-23 to grant, issue, reissue, modify, deny, suspend or revoke permits and to limit or condition issued permits in keeping with a consideration of the public policy expressed in M.C.A. § 49-27-3.
- 106 The Commission has determined that certain mandatory requirements must be satisfied in order for an impact or activity to be authorized or for any activity or agency action to be deemed consistent with the PROGRAM.

Chapter 03 **Definitions**

- 100 **ACCESS PIER:** A pier or similar structure roughly perpendicular to the shoreline necessary to link docks, piers, boat shelters, hoists, and similar structures to land.
- 101 **BENEFICIAL USE OF DREDGED MATERIAL:** The use of dredged material for the restoration, enhancement, or protection of coastal habitats and ecosystems in accordance with M.C.A. § 49-27-61.
- 102 **COASTAL PROGRAM AGENCIES:** The Mississippi Department of Marine Resources, the Mississippi Department of Environmental Quality-Office of Pollution Control, the Mississippi Department of Environmental Quality-Office of Land and Water Resources, and the Mississippi Department of Archives and History. These agencies have administrative responsibilities for implementing the goals of the coastal program.
- 103 **COASTAL WETLANDS:** All publicly-owned lands subject to the ebb and flow of the tide; which are below the watermark of mean high tide (MHT); all publicly-owned accretions above the watermark of mean high tide and all publicly-owned submerged

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- water-bottoms below the watermark of mean high tide and includes the flora and fauna on the wetlands and in the wetlands.
- 104 **COASTAL ZONE:** Hancock, Harrison, and Jackson Counties seaward to the State’s jurisdictional limits.
- 105 **COMMISSION:** The Mississippi Commission on Marine Resources.
- 106 **DEPARTMENT:** The Mississippi Department of Marine Resources.
- 107 **DREDGING:** The removal or displacement by any means of soil, sand, gravel, shells or other material, whether of intrinsic value or not, from coastal wetlands or areas in the Coastal Zone below MHT.
- 108 **EXCAVATION:** The removal or displacement of soil above MHT which results in the affected area being made subject to regular tidal inundation.
- 109 **EXECUTIVE DIRECTOR:** The Executive Director of the Department of Marine Resources.
- 110 **FAILED STRUCTURE:** A structure that has deteriorated to the point that it no longer provides the intended and original function.
- 111 **FAILING STRUCTURE:** A structure that has structural weaknesses but that still provides the intended and original function.
- 112 **FILLING:** The displacement of waters by deposition of soil, sand, gravel, shells, or other material into Coastal Wetlands or the Coastal Zone; or the artificial alteration of water levels or water currents by physical structures, drainage ditches or otherwise.
- 113 **MAINTENANCE:** Care or upkeep of facilities or structures in order to preserve their condition, purpose, and or function.
- 114 **MARINA:** 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.
- 115 **MEAN HIGH TIDE:** The arithmetic mean of all the high waters occurring in a particular nineteen-year (19-year) tidal epoch period or for a shorter period of time after

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- corrections are applied to the short term observations to reduce these values to the equivalent nineteen-year (19-year) value.
- 116 **MEAN LOW WATER:** The arithmetic mean of all the low waters occurring in a particular nineteen-year (19-year) tidal epoch period or for a shorter period of time after corrections are applied to the short term observations to reduce these values to the equivalent nineteen-year (19-year) value.
- 117 **MISSISSIPPI COASTAL PROGRAM (PROGRAM):** The consolidated statement of State policy in the coastal area, as prescribed by M.C.A. § 57-15-1 *et seq.*, including all narratives, descriptive materials, maps, figures, and tables.
- 118 **MISSISSIPPI COASTAL WETLANDS PROTECTION ACT (CWPA):** M.C.A. §§ 49-27-1 *et seq.*
- 119 **PERSON:** Any natural person, partnership, joint stock company, corporation, unincorporated association or society, or the state and any agency thereof, or any county, municipality or political subdivision, or any other corporation of any character whatsoever.
- 120 **PRIVATE SINGLE-FAMILY OR MULTI-FAMILY PIER:** 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.
- 121 **PUBLIC BEACH:** Any beach which has been dedicated to the public or in which the public has a right of use by easement, prescription, custom, government ownership, or any other act, law or instrument.
- 122 **PUBLIC MARINA:** 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.

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- 123 **REGULATED ACTIVITIES:** The dredging, excavating or removing of sediment, mud, sand, gravel, flora, fauna, or aggregate of any kind from any coastal wetlands; the dumping, filling or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands; killing or materially damaging any flora or fauna on or in any coastal wetlands; the erection on coastal wetlands of structures which materially affect the ebb and flow of the tide; and the erection of any structure on suitable sites for water dependent industry. The use of the term “indirectly” in this definition covers the possibility of activities located outside of coastal wetlands that cause dumping, filling, or depositing in coastal wetlands.
- 124 **REPAIR:** Restoring facilities or structures to their original condition, purpose, and function.
- 125 **SENSITIVE COASTAL WETLANDS:** Coastal Wetlands containing submerged aquatic vegetation, emergent marsh vegetation, shellfish beds, fishing reefs, and hard banks containing reef building organisms.
- 126 **SMA:** A Special Management Area designated under Chapter 21.
- 127 **SUITABLE SITES FOR WATER DEPENDENT INDUSTRY:** 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. The definition is limited to, but does not necessarily include, 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.
- 128 **TIDAL MARSH:** Areas of vegetated lands from the watermark of MHT seaward to a point where the vegetation ceases to exist.
- 129 **WATER DEPENDENT INDUSTRY:** Those commercial, industrial, or manufacturing activities which, for purposes basic to their existence, must occur or locate on or adjacent to the estuaries, sounds, channels, shores or marshlands of the coast.

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- 130 **WATERBOTTOMS:** Coastal Wetlands from the seaward limit of tidal marsh to the limit of the territorial sea, exclusive of dredge material disposal islands and other accretions above mean high tide.
- 131 **YACHT CLUB MARINA:** 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.

Chapter 04 Coastal Wetlands Permit Application Procedures

- 100 Unless excluded by M.C.A. § 49-27-7 or § 49-27-9 of the Mississippi Code, every person proposing to conduct or cause to be conducted a regulated activity or an activity on a suitable site for water dependent industry must make application for and secure a permit. These applications shall be subject to the procedures outlined in Chapter 04, Chapter 05, and Chapter 06. Entities and activities excluded by M.C.A. § 49-27-7 or § 49-27-9 will be subject to the procedures outlined in Chapter 11.
- 100.01 Permit applications must be submitted to the Department on prescribed forms. One (1) copy of the application must be submitted along with an application fee payable to the Department. In accordance with M.C.A. § 49-27-15, an applicant must pay the publication fees and the costs of providing notice to the public.
- 100.02 Multiple regulated activities associated with the same project must be included on one permit application.
- 100.03 As required by M.C.A. § 49-27-11, an application must include:
- 100.03.01 The name and address of the applicant.
- 100.03.02 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.

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- 100.03.03 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 coordinates, 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.
- 100.03.04 An estimate of the cost of the activity.
- 100.03.05 The primary and secondary purposes of the project, including contemplated future projects.
- 100.03.06 A description of any public benefit to be derived from the proposed project dependent upon the proposed activity.
- 100.03.07 A complete description of measures to be taken to reduce detrimental off-site effects to the coastal wetlands during and after the proposed activity.
- 100.03.08 The completion date of the proposed activity and of the project dependent upon the activity.
- 100.03.09 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 will satisfy this requirement if submitted by the applicant.
- 100.03.10 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. The use of the joint

Department/U.S. Army Corps of Engineers form is sufficient to meet this certification requirement as it applies to a permit from the U.S. Army Corps of Engineers and the DEQ Office of Pollution Control.

- 100.04 Upon receipt of an application, the Department will make a determination as to which of the following categories the proposed activity falls into:
- 100.04.01 Regulated activity. Applications for regulated activities are subject to the application evaluation procedures in Chapter 04, Chapter 05, and Chapter 06.
 - 100.04.02 Excluded activity or entity. Applications submitted by excluded entities or for excluded activities as defined in Chapter 11 are subject to the application evaluation procedures in Chapter 11.
 - 100.04.03 Non-regulated activity subject to Federal Consistency review. These applications are subject to the application evaluation procedures in Chapter 13, Chapter 14, Chapter 15, Chapter 16, and Chapter 17 of this Part.
 - 100.04.04 State agency action subject to review. These applications are subject to the application evaluation procedures in Chapter 18 of this Part.
 - 100.04.05 An application for multiple activities that fall within more than one of the above categories is subject to the application evaluation procedures for the category requiring the more stringent review. The categories, in order of stringency from least to greatest are: state agency action subject to review, non-regulated activity subject to Federal Consistency review, excluded activity or entity, regulated activity.

Chapter 05 Public Notice and Hearings

- 100 Upon receipt of an application requiring a permit to conduct regulated activities, the Department may provide a copy of the application to the affected public officials listed in M.C.A. § 49-27-13, and must provide a copy of the application to the Coastal Program Agencies at least thirty (30) days prior to issuance of a permit to allow for their review in accordance with Chapter 20.
- 101 The Department must publish notice of a date by which written objections to any application must be filed.

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- 101.01 Publication must be no later than sixty (60) days from the receipt of a completed application.
 - 101.02 Notice must be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper of general circulation in the county of the affected wetlands.
 - 101.03 The last publication must be made not more than seven (7) days prior to the date by which written objections must be filed.
 - 101.04 The published notice must describe the site of the proposed activity and give a description of the proposed regulated activity.

102 Hearings

- 102.01 The Department may schedule a hearing on any application.
- 102.02 The Department must schedule a hearing on an application if, during the time period in which written objections are required to be filed:
 - 102.02.01 A written request for a hearing is submitted by the applicant.
 - 102.02.02 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.
- 102.03 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.
- 102.04 Notice must 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.
- 102.05 Notice must also be given to all of those parties who are sent copies in accordance with the appropriate application evaluation procedures, all known present owners of record of adjacent land by current tax assessment rolls, and all known

claimants to water or riparian rights in or adjacent to the coastal wetlands affected area.

- 102.06 At such hearing, any person may present oral or written comments on the application.
- 102.07 Any person who files a written objection may appear at the public hearing and be heard.
- 102.08 The burden of proof will be on the applicant, whether a hearing is held or not, provided, however, no application will be denied without giving the applicant a right to a hearing according to the provisions of the Coastal Wetlands Protection Act.
- 102.09 Oral testimony at hearings will be recorded, but will not be required to be transcribed except in the event of appeal.

Chapter 06 **Application Evaluation**

- 100 The Commission must base all of its decisions generally on the rules, guidelines, and procedures found in Title 22, Part 23, and specifically on the findings and recommendations of the Department.
- 101 The basis of the Commission's decisions must be made a part of its minutes.
- 102 In making recommendations for regulated activities, the Department will evaluate the proposed activity against the public policy of coastal wetlands protection in Section 49-27-3 of the Mississippi Code. Preference is to be given to preserving the coastal wetlands in their natural state, and the burden of demonstrating the higher public interest in altering coastal wetlands rests with the party proposing the alteration.
- 103 In evaluating the public interest and making recommendations for regulated activities, the Department will consider and make findings on the following:
 - 103.01 Applicable legislative and judicial statements of public interest.
 - 103.02 The Coastal Wetlands Use Plan: Permits will be granted only for projects allowed by the Use Plan. The Plan is divided into use districts with specific allowable uses within each district as specified in Chapter 07. Changes to the Use Plan may be granted at the discretion of the Commission, based on findings and

recommendations from the Department. The process for requesting and justifying a change to the Use Plan is described in Chapter 07.

- 103.03 Requirements for Conducting Regulated Activities: The applicable requirements for conducting regulated activities as specified in Chapter 08 must be followed unless the applicant specifically requests and justifies a variance. Variances may be granted at the discretion of the Commission, based on findings and recommendations from the Department. The process for requesting and justifying a variance is described in Chapter 08.
- 103.04 Precedent setting effects and existing or potential cumulative impacts of similar or other development in the project area.
- 103.05 The extent to which the proposed activity would directly and indirectly affect the biological integrity and productivity of coastal wetlands communities and ecosystems.
- 103.06 The full extent of the project, including impacts induced by the project, both intended and unintended but reasonably anticipated.
- 103.07 The extent of any adverse impact that can be avoided through project modifications, safeguards, or other conditions, (e.g., piers in lieu of channel dredging).
- 103.08 The extent of alternative sites available to reduce unavoidable project impacts.
- 103.09 The extent to which a proposed activity requires a waterfront location: Upon notice from parties proposing to erect structures on suitable sites for water dependent industry as defined in M.C.A. § 49-27-5(i), the Department will make a finding as to whether the proposed activity is the construction of a home, fish camp, or similar structure by an individual on his own property, or as to whether the proposed activity is a water dependent industry within the meaning of M.C.A. § 49-27-5(i) of the Mississippi Code. Chapter 09 specifies that certain activities and facilities will be considered to be water dependent and provides guidelines for evaluating applications for non-water dependent facilities on suitable sites for water dependent industry.

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- 103.10 The preservation of natural scenic qualities: Private parties and local governments are encouraged, but not required to consider the guidelines in Chapter 10 when planning projects involving regulated activities. Where a conflict arises between these guidelines and a Special Management Area as designated and approved under Chapter 21, the provisions of the Special Management Area Plan will prevail.
- 103.11 The national interest: The following aspects of the national interest will be considered.
- 103.11.01 The need for national defense and to establish and maintain facilities necessary to accomplish national defense
- 103.11.02 The National Energy Policy
- 103.11.03 The need to improve public recreational opportunities
- 103.11.04 The national need for transportation, including ports and navigation
- 103.11.05 The protection of federally listed endangered flora and fauna. The Department will consult with the Mississippi Natural Heritage Program and the U. S. Fish and Wildlife Service concerning projects that may affect endangered flora and fauna
- 103.11.06 The consideration of wild and scenic rivers and the coordination of activities affecting such rivers with efforts under the Wild and Scenic Rivers Act
- 103.11.07 The reduction of the loss of life and property damage from natural hazards, including flooding and erosion. In this connection, consideration will be given to protecting the physical integrity of Mississippi's barrier islands so that they may continue to shelter the coastal area from devastation
- 103.12 Comments received from Coastal Program Agencies in accordance with their responsibilities as outlined in Chapter 20, and comments received through public notices and hearings.
- 103.13 The provisions of approved SMA plans. Specific provisions of SMA plans will prevail over the considerations noted above.

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- 104 All uses in coastal wetlands being legally conducted as of the adoption of Title 22, Part 23 are allowed to continue to the extent provided under existing legal authorization. Normal repair and maintenance of existing and functioning structures above the watermark of mean high tide does not require a permit. All structures below the watermark of mean high tide require prior authorization before repair or alteration and any alteration of location, size, or configuration of an existing structure requires prior authorization. Failed structures that are not serving the purpose for which they were constructed must conform to current guidelines. Failing structures may be granted authorization for repairs in their original location, size, configuration and design at the discretion of the Executive Director or their delegate.
- 105 In granting a permit, the Commission may provide for such conditions as may be necessary to ensure compliance with the Coastal Program.
- 106 As a condition of granting a permit, the Commission may require mitigation as a means of minimizing net adverse impacts on coastal wetlands. The magnitude of any mitigation requirement must be reasonably related to the magnitude of the activity under consideration.
- 106.01 Where an area management plan is in force, the Commission will not require mitigation above and beyond that called for in the plan. In the absence of an area management plan, mitigation will be determined on a case-by-case basis.
- 107 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.
- 108 Any permit granted will expire on such date and on such terms and conditions as determined by the Commission for such permit.
- 109 In accordance with M.C.A. § 49-27-61, the Commission will charge Fifty Cents (50 cent(s)) per cubic yard for any sand or gravel removed from wetlands and Twenty-five Cents (25 cent(s)) per cubic yard for any other materials removed from Coastal Wetlands by a permittee or his agent under the terms of any permit issued. This regulation does not authorize or promote the direct sale of material from coastal wetlands. The purpose of this regulation is to ensure that the State of Mississippi is fairly compensated for

materials removed from Coastal Wetlands in conjunction with the conduct of a regulated activity.

- 109.01 There will 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.
- 109.02 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.
- 109.03 Any party participating in the beneficial use of dredge materials programs under M.C.A. § 49-27-61(2) will be exempt from these charges.
- 110 An applicant, or any person, corporation, municipal corporation, county, or interested community group authorized by M.C.A. § 49-27-39 to take an appeal to Chancery Court may request the Commission to reconsider a permit decision. A copy of such request must be provided to the Commission, which will consider the request and may secure any additional information it deems necessary, either through the Department or through testimony from interested parties. Any party named may appeal from the Commission's decision to Chancery Court in accordance with M.C.A. § 49-27-39 through § 49-27-49.

Chapter 07 Coastal Wetlands Use Plan

- 100 The Department maintains a digital map that depicts the Coastal Wetlands Use Plan that serves as the basis for permitting.
- 101 The Coastal Wetlands Use Plan depicted on this map and presented in this Chapter is binding only on wetlands below the watermark of Mean High Tide.
- 102 A permit will not be issued for a regulated activity unless that activity is associated with a use allowed in the Coastal Wetlands Use Plan.
- 103 The Commission will not consider the exclusions listed in Chapter 11 to be in compliance with the public policy of wetlands protection unless the activity in question is allowable under the coastal wetlands use plan.
- 104 Special Management Area plans adopted pursuant to Chapter 21 shall override the Coastal Wetlands Use Plan.

105 The Coastal Wetlands Use Plan is divided into use districts. These districts and the allowable uses within each district are described below:

- 105.01 **Industrial Development (I) Districts** are coastal wetlands areas designated to accommodate water dependent industrial development. Allowable uses or activities in an industrial development district are the construction of piers, docks, wharfs, dolphins, bulkheads, skids, marine launchways, dry docks, graving docks, launching ramps, hoists, cranes, submarine cables or pipelines, water intake or effluent discharge structures, other similar structures necessary for water dependent industrial development. Uses allowed in C and G districts are also allowable.
- 105.02 **Commercial Fishing, Recreational Marina, and Dockside Gaming (C) Districts** are coastal wetlands areas designated to accommodate developments necessary to support commercial fishing or recreational marinas, dockside gaming and associated activities. Allowable uses or activities are commercial fishing and recreational marinas, dockside gaming, shorefront finfish and shellfish processing facilities, ice plants and boat repair facilities for commercial fishing and recreational use, the construction of piers, docks, dolphins, bulkheads, wharfs, launching ramps, hoists or cranes, other similar structures necessary for commercial fishing, dockside gaming and recreational marina use as well as dredging and filling necessary to accommodate these uses. Uses allowed in G districts are also allowable.
- 105.03 **General Use (G) Districts** are coastal wetlands areas where only minor alterations are allowed when such alterations do not adversely affect recreation, swimming, fishing, and the natural scenic qualities of the wetlands. Allowable uses or activities are the construction of piers, docks, bulkheads and other similar structures for non-commercial purposes; submarine cables and pipelines; launching ramps; oyster farming, transportation facilities developed under a plan reviewed and found to be consistent under Chapter 14 or Chapter 18; overhead transmission lines; beach nourishment activities; reasonable dredging necessary to accommodate the above uses. All wetlands not otherwise designated are considered general use areas.
- 105.04 **Preservation (P) Districts** are coastal wetlands areas where no permanent alterations are allowed except as described below. Allowable uses are activities

such as fishing, oystering, swimming, hunting, trapping, scientific or educational pursuits and other passive recreation. Where a P district adjoins private property, the riparian owner may construct a pier to gain water access. Coastal wetlands designated for preservation are indicated by map code P₁ and seagrass beds designated for preservation are indicated by map code P₂. Projects intended to provide restoration or enhancement of coastal wetlands may be allowed within Preservation Districts. The use district for the project area will be changed to S₆.

- 105.05 **Special Use (S) Districts** are areas of coastal wetlands which are leased and/or designated for certain specific uses. These uses and their corresponding map codes are described below.
- 105.05.01 S₁: Natural and artificial oyster reefs where seafood harvesting operations as provided for by law are allowed.
- 105.05.02 S₂: Leased coastal wetlands for oyster cultivation where only seafood harvesting by the leaseholder is allowed. Oyster leases granted by the Department become S₂ designation on the Coastal Wetlands Use Plan Map.
- 105.05.03 S₃: Leased coastal wetlands for other purposes, where uses specified in a lease from the State of Mississippi are allowed, provided the activities have previously been reviewed and approved by the Commission. Leases let by the Secretary of State and the DEQ for projects reviewed and approved by the Commission become Special Use S₃ Districts on the Coastal Wetlands Use Plan Map. This designation is in addition to the existing use designation.
- 105.05.04 S₄: Areas of coastal wetlands designated for dredged material disposal other than beneficial use of dredged material.
- 105.05.05 S₅: Areas of coastal wetlands where navigation channels may be constructed and maintained.
- 105.05.06 S₆: Restoration and enhancement areas. Uses allowed in P districts are allowable unless otherwise prohibited.
- 105.06 Applicants proposing to conduct regulated activities which are not associated with a use allowed in the current use district may petition the Commission for a change to the use district by specifically justifying the request. Adjustments to the Coastal

Wetlands Use Plan may be granted at the discretion of the Commission, based on findings and recommendations from the Department. Hearings and notices thereof must be in accordance with Chapter 05. Notification must provide the general public or governmental entities an opportunity to comment or object to the activity and include the opportunity for a public hearing. Approval of an adjustment must be based on one (1) or more of the following criteria:

- 105.06.01 No significant environmental impacts would occur as a result of the use allowed; no feasible, alternative sites in the use designation being requested are available; the general public and governmental entities were notified of the activity; no significant conflicts with surrounding uses or public access to coastal wetlands would occur; and the activity does not adversely affect the public interest in wetlands protection;
- 105.06.02 There is a significant public benefit in the activity; impacts to public access and adverse environmental impacts have been minimized; the general public and governmental entities were notified of the project; and a public hearing was held;
- 105.06.03 The adjustment would be temporary in order to allow a temporary activity in the public interest with the adjustment occurring in a prescribed period set by the Commission, at the end of which the area would revert to the original use designation.
- 105.06.04 There was a mistake in the original drafting of the Coastal Wetlands Use Plan.

Chapter 08 Requirements for Conducting Regulated Activities

100 Docks, Piers, Boat Shelters (including boathouses), and Hoists:

- 100.01 Must be constructed in a manner that will not affect the ebb and flow of the tide. All structures must be configured to minimize adverse environmental impacts.
- 100.02 Must be of sufficient length to reach navigational depths adequate for their proposed use in order to minimize the necessity of dredging.
- 100.03 Must be constructed in a manner that does not restrict access to public beach areas.

100.04 Must not create a hazard to navigation in waterways.

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100.06 Mooring pilings and buoys require authorization and must be constructed in accordance with the requirements for docks, piers, boat shelters and boat hoists.

101 Boat Ramps:

101.01 Must be located in areas which do not require the destruction of sensitive coastal wetlands, and which require minimum dredging to reach adequate water depths; both initial and maintenance dredging must be considered.

101.02 Storm water runoff from boat ramp approaches and parking areas must not be directed down the boat ramp or be allowed to damage sensitive coastal wetlands.

101.03 Must be designed so that they do not interrupt the natural movement or supply of sediments.

101.04 Fill material for boat ramp surfaces must be the minimum necessary to meet project requirements.

101.05 Must consist of environmentally acceptable materials, demonstrate sound design and construction so that they could reasonably be expected to be safe and effective, and minimize adverse impacts.

101.06 See also Requirements for Dredging and Excavation (Chapter 08, 117).

102 Marinas, Boat Basins, and Boat Slips:

102.01 Must be located in areas that will have minimal adverse impact on wetlands, water quality, wildlife and marine resources, or sensitive coastal wetlands, and where minimal initial and maintenance dredging will be required.

102.02 Designs must not disrupt currents or restrict tidal flow.

102.03 Marinas must be located at least one thousand (1,000) feet from shellfish harvesting areas and at least seventy-five (75) feet from areas containing submerged or regularly flooded emergent vegetation.

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- 102.04 More efficient utilization of existing marina space is preferable to new marina construction. Innovative solutions to increased demands for additional boat mooring and storage space, including dry stack storage or alternative slip mooring configurations, are encouraged and must be addressed in the environmental assessment required by Chapter 04, 100.03.09.
- 102.05 Must be designed to avoid sumps and other conditions which would result in long-term degradation of water quality. Depths of marina basins, boat basins, and boat slips must be no deeper than the controlling depth of the parent body of water (navigational depth of adjacent waterway) and must become gradually shallower proceeding from the parent body of water to the nearshore area.
- 102.06 Must not be sited in areas of known high siltation and high shoaling rates or be located in areas of poor water circulation.
- 102.07 Proposals must include a long term dredged material disposal plan which provides for suitable upland disposal sites of sufficient size to accommodate disposal of dredged material from initial and future maintenance dredging.
- 102.08 Boat slips must be designed to have angled sides of one hundred and twenty-five (125) degrees or greater in order to provide for proper flushing and tidal exchange. Existing keyhole boat slips that are being modified must be modified in such a manner that allows for increased tidal flushing of waters.
- 102.09 Must provide for water circulation and be designed to accommodate tidal flushing by incorporating flow through breakwaters or similar structures. Marinas excavated from uplands or that are otherwise enclosed must have two (2) or more unrestricted openings for tidal movement.
- 102.10 The marina developer or agent must provide the Department a completed "Coastal Marina Screening Checklist" prior to filing a permit application with the Department or as an attachment to the application.
- 102.11 Marinas other than for expansion of existing municipal marinas or the construction of new public marinas by city, county, state or federal entities must not be located on or waterward of public beaches.

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- 102.12 Marina proposals require surveys for submerged aquatic vegetation and shellfish within the area proposed for marina development.
- 102.13 Project proposals must include facilities for the proper handling of petroleum products, sewage, litter, waste, and other refuse. Marinas must have facilities for the collection and disposal of wastewater generated on site and must provide pump-out facilities for the collection and disposal of wastewater from onboard holding tanks. Connections from marina disposal systems to existing sewage collection systems are preferable to collection of waste in a holding tank, and holding tanks are preferable to on-site collection and treatment of wastewater. If a holding tank collection system is utilized, proof of a contract with a pump-out service must be provided. Waste disposal and collection systems must be approved by appropriate state agencies, must have adequate signage directing vessels to the pumpout facility, and must describe the method of operation for the pumpout system.
- 102.14 Marinas are prohibited from conducting or allowing any activity that would negatively impact the current classification of adjacent shellfish growing waters as classified by the Department in accordance with Title 22, Part 1.
- 102.15 See also Requirements for Bulkheads and Seawalls (Chapter 08, 103), Channels and Access Canals (Chapter 08, 106), Dredged Material Disposal (Chapter 08, 107), Filling Other Than Dredged Material Disposal (Chapter 08, 114), and Dredging and Excavation (Chapter 08, 117).
- 103 Bulkheads, Seawalls, Breakwaters, Groins and Jetties:
- 103.01 For erosion control, nonstructural methods must be used in preference to structural methods. Vegetation as a nonstructural method is preferred to structural methods of sloping (3:1) rip-rap, and rip-rap is preferred to vertical seawalls. Vertical face bulkheads may be used only in low energy areas such as canals, bayous, tidal rivers, protected ports and harbors.
- 103.02 Structural methods may be used only when there is a reasonable probability of controlling erosion at the immediate site, and where the structure will not significantly increase erosion in nearby areas.

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- 103.03 Vertical face structures must be aligned no further waterward than the current mean high tide line, and constructed so that reflective wave energy does not damage adjacent wetlands habitat.
 - 103.04 Vertical face structures intended to replace failed erosion control structures that are beyond repair shall not extend more than 24” waterward from the base of a failed structure.
 - 103.05 Breakwaters, groins and jetties must be constructed in a manner that allows for tidal flow and flushing.
 - 103.06 Rock breakwaters, groins and jetties must have sloping sides appropriate to the proposed location and purpose.
 - 103.07 Breakwaters, groins and jetties must not adversely alter tidal circulation patterns, sediment transport processes, the natural supply of sediment and nutrients to the coastal wetlands or the long-term biological productivity of the coastal wetlands’ ecosystem.
 - 103.08 Breakwaters, groins and jetties must not be constructed in areas of sensitive coastal wetlands.
 - 103.09 Groins and jetties to trap sediments are allowed only as a means to reduce shoaling of navigable channels and boat basins.
 - 103.10 See also Requirements for Filling Other Than Dredged Material Disposal (Chapter 08, 114).

104 Cables, Pipelines and Transmission Lines:

- 104.01 Permanent open water canals in coastal wetlands for installation of cables, pipelines and transmission lines are not authorized. Where temporary dredging or excavation is required in coastal wetlands, all dredged/excavated areas must be backfilled with the removed material after installation of the appropriate structure, with care taken to maintain the original wetland elevation in both the dredged/excavated area and removed material disposal area. Removed material must be temporarily stockpiled in discontinuous banks so that sheet flow is not disrupted. Appropriate erosion control measures must be employed during the crossing of wetland areas.

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- 104.02 After dredging/excavation and backfilling is complete, all impacted coastal wetlands must be re-vegetated with indigenous species. If the areas have not re-vegetated to pre-project conditions within one (1) year of the completion of the project, restoration of the impacted area will be required.
- 104.03 In open water areas, removed material must be deposited in discontinuous piles on opposite sides of the dredge area, which must be backfilled after project completion. After the project is complete the impacted area must be restored to pre-construction conditions, and all excess removed material must be beneficially utilized in accordance with M.C.A. § 49-27-61 or deposited in upland areas.
- 104.04 Alignments of new projects must be designed to use existing rights-of-way and topographic features, wherever feasible.
- 104.05 Projects must be aligned along the least environmentally damaging route. Sensitive coastal wetlands must be avoided when possible. If sensitive coastal wetlands cannot be avoided, the applicant must demonstrate that the alternative proposed is the least damaging most practicable alternative.
- 104.06 Projects must be aligned to avoid shipwrecks and areas of unique historical and cultural interest.
- 104.07 Must be buried at least ten (10) feet below authorized channel depth within maintained channels and four (4) feet below the mud line outside maintained channels.
- 104.08 See also Requirements for Dredging and Excavation (Chapter 08, 117).
- 105 Transportation:
- 105.01 Bridging must be used in preference to filling to create roadbeds, railways, and other transportation facilities. Suitable erosion control methods must be used on bridge approaches.
- 105.02 Structures must be designed to preserve natural water flow and circulation regimes and to prevent excessive shoaling or erosion.

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- 105.03 Except for the construction of replacement bridges and approaches, transportation improvement projects must generally follow existing alignments in coastal wetlands.
 - 105.04 Transportation facilities must be designed to accommodate other public utilities, thus avoiding other unnecessary coastal wetland alteration. An example would be the use of existing rights-of-way and bridges to accommodate cables, transmission lines or pipelines.
 - 105.05 Roadway embankments and fill areas must be stabilized by utilizing appropriate erosion devices and/or techniques in order to minimize erosion and water quality degradation problems. Culverts are required, where appropriate, in order to maintain normal tidal influence and minimize disruption of drainage patterns.
 - 105.06 All streams must be bridged or provided with culverts to prevent alterations to tidal influence and natural drainage patterns.
 - 105.07 Culverts or similar structures must be installed under the road at appropriate intervals (never more than two hundred and fifty (250) feet apart) to prevent blockage of surface drainage or tidal flow, with all culvert openings being subsequently maintained.

106 Channels and Access Canals:

- 106.01 Must be designed to ensure adequate flushing and must not create stagnant pockets; they must use existing drainage patterns to maximum advantage; they must be of uniform depth or become gradually shallower proceeding from the receiving body of water; they must be no deeper than the parent body of water (navigational depth of adjacent waterway) and where feasible, must be aligned with prevailing summer winds to increase circulation.
- 106.02 Alignments must make maximum use of natural or existing channels to minimize initial and maintenance dredging requirements.
- 106.03 Alignments must avoid sensitive coastal wetlands, nursery and spawning areas, and archeological and historical sites. A submerged aquatic vegetation (grassbed) or an archeological survey may be required.

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- 106.04 Permanent dredged material disposal sites must be designated for initial construction as well as future maintenance dredging for all canal or channel projects.
 - 106.05 Construction must be conducted in a manner that minimizes turbidity and dispersal of dredged materials into adjacent coastal wetlands, and on schedules that minimize interference with fish and shellfish migration and spawning.
 - 106.06 Designs must not significantly alter tidal circulation patterns or sediment transport processes, create change in salinity regimes, or change related nutrient and aquatic life distribution patterns.
 - 106.07 New canals for waterfront lots must be constructed from the mean high tide line landward and must be open to a major waterway at two (2) or more points.
 - 106.08 Dead end canals are not permitted except where water flow is sufficient to flush the canal on a regular basis.

107 Dredged Material Disposal:

- 107.01 All dredged material will be viewed as a potential reusable resource, and all disposal plans must include provisions for access to such resources.
- 107.02 Dredged material suitable for beach replenishment, habitat restoration and enhancement, construction, or other purposes (sanitary landfill, agricultural soil improvement, etc.) must be used immediately for such purposes or stockpiled in designated beneficial use staging areas or other nonwetland areas for later use.
- 107.03 All projects involving the removal of over two thousand five hundred (2500) cubic yards of dredged material must evaluate the dredged material in accordance with approved procedures to determine suitability.
- 107.04 All dredged material determined to be suitable for beneficial uses must participate in the Department programs involving beneficial use.
- 107.05 If dredged material is not suitable for beneficial use, then existing upland disposal areas must be used to the fullest extent possible. Examples include raising the height of containment embankments to increase the holding capacity of the

disposal area, and the application of modern engineering techniques to render the material suitable for useful purposes.

107.06 Disposal dikes for non-beneficial use and upland disposal areas must be shaped and stabilized immediately upon construction to minimize erosion and dike failure, and out-falls must be positioned to empty back into the dredged area.

107.07 Areas containing sensitive coastal wetlands must not be used for dredged material disposal.

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

107.09 New dredged material disposal proposals must include a maintenance plan for the shorter of fifty (50) years or the life of the project.

108 Tidal Marsh and Watershed Impoundments:

108.01 New tidal marsh impoundments are prohibited except where a proposed impoundment is part of a plan adopted by the Commission following the same procedures used for promulgating regulations.

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

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

109 Drainage Canals or Ditches:

109.01 Must not be extended through coastal wetlands or tidally-influenced marshes (except where land subsidence has severely lowered the developed lands). Rather, they must terminate at the landward edge of the coastal wetlands or tidally-influenced marshes, to allow filtration through the coastal wetlands.

109.02 A spreader canal, or a canal designed to disperse water over the landscape in more natural sheet flow, may be used along the uplands adjacent to marsh.

110 Oil and Gas Exploration and Production:

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

110.02 Proposed road alignments must use upland or previously disturbed marsh areas.

110.03 All streams must be bridged or provided with culverts to prevent alterations to tidal influence and natural drainage patterns.

110.04 Culverts or similar structures must be installed under the road at appropriate intervals (never more than two hundred and fifty (250) feet apart) to prevent blockage of surface drainage or tidal flow, with all culvert openings being subsequently maintained.

110.05 No hydrocarbons, hydrocarbon containing substances, drilling muds, drill cuttings, or toxic substances are allowed to flow into coastal wetlands or other wetlands adjacent to coastal wetlands.

110.06 Upon completion or abandonment of wells in coastal wetlands or other wetlands adjacent to coastal wetlands, all unnecessary equipment must be removed; the well site, levees, roads, and work areas must be restored to the conditions that supported the type of wetland that existed prior to development.

110.07 Existing navigable waters must be used for access to oil and gas extraction sites in preference to new dredging or excavation.

110.08 Sensitive coastal wetlands and other productive shallow water areas must be avoided when siting extraction facilities. Directional drilling must be employed when the shorelines of barrier islands or beaches, small fishing banks, hard banks, or reefs would otherwise be disturbed.

110.09 No discharge into coastal wetlands or other wetlands adjacent to coastal wetlands of cuttings, drilling fluids, produced waters, sanitary wastes, contaminated deck

drainage, or any other materials that are associated with oil and gas operations in the coastal wetlands of Mississippi, except that non-contact cooling waters when permitted for discharge under the National Pollutant Discharge Elimination System program is allowed.

- 110.10 To maintain the integrity of small fishing banks, (generally five hundred (500) acres or less) and their accessibility by sport and commercial fishermen, no structures are authorized to be placed either temporarily or permanently on the top of these banks.
 - 110.11 For exploration and production activities in close proximity to sensitive coastal wetlands or fishing areas, uncontaminated drill cuttings must be shunted away from sensitive areas and discharged at or near the bottom, or must be transported to shore or to less sensitive offshore locations.
 - 110.12 Drilling and production structures, and oil pipelines must not be placed within one (1) mile of the bases of live reefs.
 - 110.13 All facilities, obstructions, or debris that could impair recreational or commercial fishing must be removed or terminated beneath the water bottom. Whenever this is not practicable, a lighted buoy must mark them to prevent fouling of fishing gear.
 - 110.14 All pipelines placed in coastal wetlands must be buried.
 - 110.15 See also Requirements for Dredging and Excavation (Chapter 08, 117).
- 111 Other Mineral Extraction:
- 111.01 Extractions of marine mineral resources (sand, gravel, shell, phosphates, etc.) from coastal wetlands within one thousand five hundred (1,500) feet of tidal marshes or within one (1) mile of the base of live reefs is prohibited except for obtaining cultch material or material for beach replenishment.
 - 111.02 Extraction of marine mineral resources (sand, gravel, shell, phosphates, etc.) within sensitive coastal wetlands is prohibited except for obtaining cultch material or material for beach replenishment.

111.03 If extraction of marine mineral resources is allowed under this section, site reclamation and restoration is required.

112 Facilities Requiring Water for Cooling or Heating:

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

112.02 Intake and discharge facilities must be sited in areas of low organism concentrations.

112.03 Intakes must be designed to minimize impingement. If offshore intakes are employed, velocity caps or similar means must be used to produce horizontal intake currents with a maximum velocity of one-half (1/2) foot per second (fps) at the intake screen.

112.04 All discharges must meet the requirements in the “State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters”, which can be accessed at:
http://www.deq.state.ms.us/mdeq.nsf/page/WQSB_Water_Quality_Standards.

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

113 Activities Affecting Coastal Wetlands:

113.01 Activities affecting coastal wetlands, but located outside of coastal wetlands must not affect the following characteristics to a greater extent than would otherwise be allowed under Chapter 08, Sections 100 through 112 and 114 through 117:

1. The natural supply of sediment and nutrients to the coastal wetlands.
2. The natural temperature regimes that are part of the ecosystem of coastal wetlands.
3. Salinity regimes.
4. Sediment transport processes.
5. Water flow and natural circulation.
6. The long-term biological productivity of the coastal wetlands’ ecosystem

113.02 Activities in the Coastal Zone requiring a Section 404 permit from the U. S. Army Corps of Engineers for discharges into navigable waters of the United States, their tributaries, and adjacent wetlands are highly likely to affect coastal wetlands by altering the characteristics of the ecosystem. These activities may constitute regulated activities under M.C.A. § 49-27-5(c) (ii) and (iii). Where such activities are conducted outside of coastal wetlands, proper application to the U. S. Army Corps of Engineers constitutes sufficient notification to the Department and the Commission.

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

1. Road resurfacing, repairing and maintenance.
2. Repair and maintenance of sewer, water and drainage systems.
3. Installation of new drainage structures such as culverts, catch basins, inlets, and junction boxes where the tributary acreage involved is less than nine hundred (900) acres and where the point of outfall for drainage system is not altered.
4. Construction activities involving less than four (4) acres of land clearing where the path of drainage flow from the site to mean low water has an average slope of less than two (2) percent.

114 Filling Other Than Dredged Material Disposal:

114.01 Permanent filling of coastal wetlands below the mean high tide line because of potential adverse and cumulative environmental impacts is not authorized.

114.02 Permanent filling of coastal wetlands above the mean high tide line for the purpose of constructing public access facilities is authorized provided the applicant demonstrates a higher public interest.

114.03 Sensitive coastal wetlands must not be filled.

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- 114.04 Fill material must be nontoxic and either stabilized or of sufficient size as to not be displaced during typical storm tides. Beach nourishment does not require stabilization.
- 114.05 Fill proposals to eliminate existing poor water quality conditions (filling of dead-end canals, keyhole boat slips, etc.) will be considered.
- 114.06 See also Boat Ramps (Chapter 08, 101), Bulkheads and Seawalls (Chapter 08, 103), Transportation (Chapter 08, 105), Oil and Gas Exploration and Production (Chapter 08, 110), and Activities Affecting Coastal Wetlands (Chapter 08, 113).
- 115 Dockside Casinos:
- 115.01 Must not be located in areas that could impact sensitive coastal wetlands.
- 115.02 Must be located in areas that require minimal dredging and provisions must be made to provide sufficient upland disposal areas to store maintenance dredging material for a minimum of fifty (50) years or the life of the project.
- 115.03 Marinas and boat slips associated with a dockside casino must be designed to conform to the marina guidelines listed in Chapter 08, 102.
- 116 Intake and Discharge Structures:
- 116.01 Must not be located in critical habitat or sensitive coastal wetlands areas.
- 116.02 Only minimal dredging or filling necessary to create/maintain serviceable intake/discharge structures will be allowed.
- 116.03 Thermal discharges must not be located in critical habitat or sensitive coastal wetlands area.
- 117 Dredging/Excavation:
- 117.01 Dredging or excavation of sensitive coastal wetlands is not authorized.
- 117.02 Dredged or excavated material must not be placed in coastal wetlands unless prior or concurrent authorization is obtained.
- 117.03 A minimum ten-foot (10-foot) buffer must be maintained between dredging/excavation and any wetlands.

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- 117.04 The dredging/excavation process must avoid creating sinks or sumps. Dredging/excavation depth is limited to that of the parent body of water (navigational depth of the adjacent waterway).
- 117.05 A minimum 3:1 (horizontal: vertical) side slope must be maintained in the dredged/excavated area.
- 117.06 Best Management Practices must be used at all times during the authorized activity to minimize turbidity at the dredged/excavated site and contaminated runoff into wetlands at the removed material disposal site(s). Acceptable methods include but are not limited to: the installation of turbidity screens around the immediate project site, staged construction, staked hay bales, staked filter cloth, sodding, seeding, and mulching.
- 118 Variances to the Requirements for Regulated Activities may be granted at the discretion of the Commission, based on findings and recommendations from the Department. To petition for a variance to the requirements, an applicant must identify the requirement(s) to which a variance is requested and must specifically justify the request. A public hearing held as part of a permit or decision process required under state or federal law, and that is referenced in Chapter 05, will be sufficient to meet the requirements of this section, if the hearing has addressed the issue of a variance. Approval of a variance must be based on one or more of the following:
- 118.01 The impacts on Coastal Wetlands would be no worse than if the requirements were followed.
- 118.02 The variance would be temporary, with restoration to conform with the requirements taking place within a period specified in a permit, which period must be no less than thirty (30) days nor more than one hundred and twenty (120) days following completion of the activity.
- 118.03 No feasible, alternative sites or construction techniques are available; there is a significant public benefit in the activity; and a public hearing has been held;
- 118.04 The activity requires a waterfront location; there is a significant public benefit in the activity; and a public hearing has been held.

Chapter 09 **Water Dependent Industry**

100 The Department will find the following to be water dependent industry:

- 100.01 Activities that meet the definition in M.C.A. § 49-27-5(i).
- 100.02 Water access facilities, including piers, docks, wharfs, dolphins, skids, marine launchways, dry docks, graving docks, launching ramps, hoists, and cranes; also included are water intake structures, effluent discharge structures, and attendant pipeline corridors fifty (50) feet or less in width.
- 100.03 Ports and associated facilities, both public and private, including water access facilities, fuel terminals, warehouses in support of port operations, bulk material handling facilities for both dry and liquid materials, tanks and silos used in material transfer operations from or to waterborne transport, grain elevators, open storage areas in support of port operations, trailer marshaling yards, any facilities designed to accommodate cargo moving in domestic or international waterborne commerce, and facilities constructed as part of a corridor from the waterfront to an inland activity which either ships or receives goods and raw materials by waterborne commerce.
- 100.04 Vessels approved for casino gaming purposes and adjacent facilities required by dockside gaming regulations under M.C.A § 75-76-1 *et seq.* and § 97-33-1.

101 The following are water dependent industries to the extent that they comply with the siting criteria below:

- 101.01 Commercial and sportfishing facilities, including finfish and shellfish processing plants and large commercial docking facilities.
- 101.02 Shipbuilding and repair for barges, cargo vessels, combat ships, dredges, tugboats, floating dry docks, ferry boats, landing ships, marine lighters, marine rigging, passenger-cargo vessels, trawlers, sailing vessels, submarine tenders tankers, towboats, houseboats, and other marine vessels and transportation.
- 101.03 Fabrication of steel and concrete structural assemblies or components requiring water transport because of their size, including barge sections, ship sections, large metal buoys, offshore platforms and subassemblies, bridge sections, hoists, trusses, beams, and other such structural components.

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- 101.04 Commercial, industrial or manufacturing activities that receive or ship raw materials or products by waterborne commerce.
- 101.05 Siting Criteria
- 101.05.01 The production site is on the landward side of its water access facility and has its smaller dimension on the waterfront. The production site is that area occupied by manufacturing facilities, including material storage yards, piping, conveyors, other handling facilities used in production, and outbuildings housing related manufacturing activities. Administration and other detached buildings not integrally related with production processes must be located either within the production site or on its landward side. The waterfront is the general shoreline of the site, notwithstanding inlets, finger canals, and the like. On corner lots, and on other parcels having more than one shoreline, the waterfront is a shoreline on which a water access facility is located.
- 101.05.02 To the extent that technical, safety, or economic requirements prevent compliance with these guidelines, a water dependent industry may site in accordance with such requirements in lieu of the criteria in the Guidelines for Water Dependent Industries. Technical requirements must be based on professionally accepted design standards or on physical requirements that stem from the size, weight, or configuration of raw materials or finished products. Safety requirements must be based on either laws, rules, regulations or ordinances promulgated by a public entity, or on safety standards promulgated by trade, industrial, or engineering associations. Economic requirements are considered when compliance with these guidelines will preclude an activity's products from being competitive in its usual markets. The demonstration that compliance with these guidelines is simply more costly than other alternatives will not in and of itself be considered economic requirement.
- 101.05.03 Where existing roads, rail lines, structures, or other physical barriers prevent an activity from complying with these guidelines by restricting the size of the area available for production facilities, structures may be built in a larger area to the extent necessary to accommodate the production facilities.

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- 101.05.04 Where a suitable site for water dependent industry is covered by special management area plans incorporated into the Mississippi Coastal Program, and where the plan specifically treats water dependency criteria, the provisions of the special management area plan will be used in lieu of the siting criteria in these guidelines.
- 102 In cases where a permit is required for the erection of structures on suitable sites for water dependent industry, because the structure is being built by a non-water dependent industry, the Department will consider the following in making its recommendations, along with comments received through the policy coordination procedures.
- 102.01 Factors in favor of granting a permit:
- 102.01.01 Technical and economic requirements; great weight will be given to granting permits for expansions of industries located on the waterfront, where such expansion involves the use of product outputs; by products, or common production facilities.
- 102.01.02 Where failure to grant permit would render site unsuitable for beneficial uses.
- 102.01.03 Where the proposed structure would not impair future waterfront industrial development of the site.
- 102.01.04 Good faith plans for waterfront uses (plans for speculative wetland filling will not be considered “good faith”).
- 102.01.05 Uncommonly high ratios of new jobs to the area of the site proposed for development.
- 102.01.06 Where a special area management plans provides for the activity in question.
- 102.02 Factors for conditioning or denying a permit:
- 102.02.01 Where alternative, feasible sites exist.
- 102.02.02 Where siting is not required on technical or economic grounds.
- 102.02.03 Where a permit would result in an activity inconsistent with the Mississippi Coastal Program.

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

Chapter 10 **Guidelines for the Preservation of Natural Scenic Qualities**

- 100 Guidelines for Beaches - Permanent structures should not be built on the open beach except for facilities such as piers, public restrooms, and lifeguard stations. Beaches should be well supplied with trash receptacles and sanitary facilities. When additional parking is needed in high use beach areas, the new parking areas should be set back from the beach, and safety devices for highway crossings should be used where appropriate. The parking lots should be marked and concealed with plantings, trees, earth mounds and berms.
- 101 Guidelines for Islands and Dunes - Any structure should blend visually with the natural landscape and should not extend above the natural silhouette of the island, excluding lighthouses and aids to navigation. Except for low, visually unobstructing access facilities such as piers, structures should not be built seaward of primary dunes, and should not destroy primary dune vegetation. New development should not destroy dune vegetation, prevent natural movement of sand, or conflict with the visual dune forms. Vehicular and pedestrian traffic in dune areas should be channeled to those locations designed to handle the usage.
- 102 Guidelines for Shorelines - Development, particularly tall structures, should be set back from the edge of natural coastal waters, rivers and bayous to preserve the visual quality of the waterbody, and to protect shoreline vegetation. New structures should not extend seaward farther than adjacent structures in the area. Facilities that are not dependent on a waterfront location should be located away from the shoreline, for environmental as well as aesthetic reasons. The natural appearance and visual attractiveness of the shoreline should be maintained. The upland vegetation against which wetlands are generally viewed should be maintained in the natural state, and structures built at the edge of coastal wetlands in predominantly undeveloped areas should be designed to blend with the surrounding area.
- 103 Guidelines for Visual Access - Sites in areas of scenic importance or traditionally public viewing points should be avoided by new developments. This is particularly true for large scale developments. The provision of public access to the shore, both physical and visual is encouraged. Easements for public viewing and waterfront access at property sidelines

should be considered. Where visual buffer areas are created by design or as a result of building setbacks, public access should be provided to these open lands for passive recreational use and view access. Institutional developments easily lend themselves to this type of access. Highways and other public facilities near the shore should be carefully designed to take advantage of waterfront views. Public access areas should be provided in port areas and small craft harbors, subject to safety and security requirements. Public facilities such as restaurants and fish houses should be provided to allow the public to enjoy the sights and activities of ports and harbors.

- 104 Guidelines for Visual Buffers - Facilities with strong utilitarian or harsh visual character should be buffered by trees, or other plantings, fencing, earth berms, and creative grading. Within industrial areas, individual sites do not require vegetated buffers to divide them. Tree planting and other vegetative screening should be employed at public edges to reduce the visual impact. Campgrounds should provide for privacy in individual sites through ample vegetative planting and screening. Mobile home courts and parks should be similarly planted and screened; units should be clustered, and common open space provided. No trailers should be allowed in beach areas.
- 105 Guidelines for Building Exteriors - In the case of large scale facilities, building mass should be broken into component units if doing so will permit some units to be better integrated into site topography. Roof form and silhouette should be varied and styled to harmonize with the surrounding landscape and to blend with the natural tree line. Except in highly developed areas, structures should reflect the natural surroundings and typical colors of existing coastal architecture. Earth colors and sky blue can be universally used for general surfaces; black, navy blue, and battleship gray are appropriate for industrial or similar building types that are meant to recede visually. Building materials and texture should reflect surrounding natural materials. Articulation of elements on facades and the use of wood or slatting of synthetic materials are ways in which this can be accomplished. Administration buildings and all structures whose design is not restricted by operational criteria should be designed to blend with surroundings, in terms of height, silhouette, mass, materials, and color. Blighted and derelict facilities should be removed, restored or rehabilitated for new uses to reduce the degradation of natural scenic qualities.
- 106 Guidelines for General Landscaping - Natural vegetation should be preserved wherever practicable. It is the intent of this guideline to require the deliberate consideration of preserving natural vegetation through good design. Landscaping should be used to

enhance, not replace, natural scenic qualities. Living plant materials should be used to harmonize structures with the landscape. Unsightly facilities should be masked with foreground plantings to be made less readily visible from the shore or water. Earth berms, mounds and other topographic modifications should be used to mask unsightly structures; where this would blend with the surrounding terrain. Where hilly or rolling topography occurs naturally, earth forming should be used to enclose and conceal utilitarian structures and facilities. Plantings should be used to stabilize shoreline erosion and to screen development along roads and other access routes. Species, planting patterns, massing, and plant heights should be compatible with the structural masses they are intended to disguise or enhance. Thinning of trees is preferable to clear cutting. Natural shrubbery and trees such as live oaks should be preserved when practicable, and where removed, replaced with other vegetation equally effective with respect to natural scenic qualities. Special consideration should be given in the design of new developments for maintenance, care and long range health of the natural vegetation. Cluster and planned unit developments should be encouraged to ensure preservation of natural scenic qualities. These developments should be guided by long range plans that integrate the public natural areas in different developments to form a continuous public system of open space. Planting of mature plant specimens should be done in urban fringe areas to maintain vegetative continuity. Tree preservation ordinances, sign ordinances, and minimum landscape ordinances for commercial structures should be adopted for urban and semi urban areas.

- 107 Guidelines for Site Furniture - The shore environment is particularly sensitive to the visual intrusions caused by billboards, utility poles and transmission lines, fences, and similar fixtures. Fencing, wastebaskets, park benches and lighting fixtures should be designed and built of materials which reflect the character of the coast, both in historic and architecturally valuable urban areas and in new developments. Signage controls should be applied in all commercial areas to limit height, size, and lettering coverage of signs on buildings and those along roadsides and highways.
- 108 Guidelines for Utilities - Utility lines should be underground where practicable, and those located above ground should be designed and located so that they avoid scenic areas, blend with the surrounding landscape or are screened from public view. These guidelines recognize that it is not practicable to locate high voltage transmission lines underground.

Chapter 11 **Excluded Activities**

- 100 Certain activities are excluded from the requirement to secure a permit based on the nature of the activity, the area where the activity would occur, or the entity proposing the activity.
- 101 Activities that would otherwise be regulated must at all times adhere to the policy as set forth in M.C.A. § 49-27-3.
- 102 Parties proposing to conduct excluded activities other than those listed in Subsections 104.03 and 104.04 of this chapter must notify the Department in accordance with Chapter 04.
- 103 When an application for an excluded activity is received, the Department will prepare a set of findings as to whether the proposed activity is in compliance with the public policy of wetlands protection in Section 49-27-3 of the Mississippi Code.
- 103.01 These findings will be prepared within forty-five (45) days of receipt of a complete application.
- 103.02 Such findings will be based on the decision factors in Chapter 06.
- 103.03 Conditions may be placed on these findings in order to ensure compliance with the public policy of wetlands protection when the excluded activity is conducted.
- 103.04 The results of or a copy of the findings will be provided to the party proposing the excluded activity through a Certificate of Exclusion, which will include any conditions necessary to ensure compliance.
- 103.05 Findings on exclusions will be used by the Department and the Commission to carry out their respective administrative responsibilities under the Coastal Wetlands Protection Act particularly under M.C.A. § 49-27-3 and under the wetlands management authority in M.C.A. § 47-15-5.
- 104 The following activities, areas, and entities are excluded from the need to secure a permit for regulated activities:
- 104.01 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.

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- 104.02 The conservation, repletion and research activities of the Mississippi 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.
- 104.03 Hunting, erecting duck blinds, fishing, shellfishing and trapping when and where otherwise permitted by law.
- 104.04 Swimming, hiking, boating or other recreation that causes no material harm to the flora and fauna of the wetlands.
- 104.05 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.
- 104.06 The normal maintenance and repair of bulkheads, piers, roads and highways existing on the date of enactment of the Coastal Wetlands Protection Act, and all interstate highways planned but not yet under construction; and financed in part by Federal Interstate Highway Trust Funds.
- 104.07 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.
- 104.08 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.
- 104.09 Wetlands used under the terms of the use permit granted by Chapter 395, Laws of 1954.
- 104.10 Any activity affecting wetlands that is associated with or is necessary for the exploration, production or transportation of oil or gas when such activity is

conducted under a current and valid permit granted by a duly constituted agency of the State of Mississippi.

- 104.11 Activities of any mosquito control commission which is a political subdivision or agency of the State of Mississippi.
- 104.12 The Fisherman's Wharf in Biloxi and the Buccaneer State Park in Hancock County.
- 104.13 Wetlands conveyed by the state for industrial development thereon pursuant to Section 211, Mississippi Constitution of 1890, and pursuant to Section 29-3-61, Mississippi Code of 1972.
- 104.14 The activities of the Hancock County Port and Harbor Commission affecting wetlands within its jurisdiction.
- 104.15 The activities of the Harrison County Development Commission affecting wetlands within its jurisdiction.
- 104.16 The activities of the Jackson County Port Authority affecting wetlands within its jurisdiction.
- 104.17 The activities of the Mississippi State Port at Gulfport affecting wetlands within its jurisdiction.
- 104.18 The construction of a water dependent industry on suitable sites for water dependent industry. This exemption does not cover other regulated activities such as dredging and filling as defined in Chapter 03.
- 104.19 The construction of a home, fishing camp, or similar structure by an individual on their own property when that property is a suitable site for water dependent industry. This exemption does not cover other regulated activities such as dredging and filling as defined in Chapter 03.
- 104.20 Regulated activities which, in the judgment of the Executive Director or his/her delegate, after an on-site inspection, have no harmful impact on the environment and which make no substantial change in the wetlands. These activities may be authorized by a Certificate of Waiver or similar authorization from the Executive Director or his/her delegate.

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- 104.20.01 A Certificate of Waiver may be issued only if the activity complies with the applicable provisions of all sections of these rules, regulations, guidelines and procedures.
 - 104.20.02 Issuance and acceptance of a Certificate of Waiver does not relieve the applicant from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or the DEQ, nor from the necessity of compliance with other applicable state or local laws, ordinances and zoning regulations.
 - 104.20.03 Activities described as eligible for a general, regional, or national permit or similar authorization from the U. S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, or any memorandum of understanding or agreement with the U. S. Army Corps of Engineers, U. S. Coast Guard or other state or federal agency having regulatory responsibility in coastal wetlands, provided such agreement or authorization has previously been reviewed by relevant federal and state agencies, are eligible for a Certificate of Waiver.
 - 104.20.04 Emergency activities that are necessary to prevent loss of life, imminent destruction of property or activities which eliminate hazards to the public well-being are eligible for a Certificate of Waiver.

105 Excluded activities proceeding without authorization under a Certificate of Exclusion or Certificate of Waiver are subject to enforcement action, as provided for in Chapter 12.

Chapter 12 Enforcement

- 100 The Department is responsible for inspection activities to ensure that the CWPA is upheld. Individuals are requested to report any apparent violations of the CWPA to the Department.
- 101 If a permittee exceeds the scope of or does not substantially comply with one or more of the conditions or limitations set forth in a Permit, Certificate of Exclusion, Certificate of Waiver, or other authorization granted by the Commission, the Executive Director, or their designee, or if any party or parties conduct or cause to be conducted a regulated activity or excluded activity without first applying for and being granted the required authorization, the following procedures must be followed:

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- 101.01 The Department will issue a notice by mail and/or by posting the notice at the site of the regulated activity in question. The notice will request the affected party to cease any regulated activity and to contact the Department to resolve the apparent violation. The notice will also inform the affected party that the apparent violation will be brought before the next meeting of the Commission.
- 101.02 Upon recommendation from the Department, the Commission may:
- 101.02.01 Suspend or revoke the Permit, Certificate of Exclusion, or Certificate of Waiver after proper notice and hearing provided for in the CWPA. Notice of the suspension or revocation must be sent to the permittee within thirty (30) days from the date of the hearing.
- 101.02.02 Require restoration of all affected Coastal Wetlands to their condition prior to the violation.
- 101.02.03 Levy a fine as allowed by the CWPA.
- 101.02.04 Issue an after-the-fact Permit, Certificate of Exclusion, or Certificate of Waiver after proper application for such in accordance with the application procedures in Chapter 04.
- 102 Procedures for action against a permittee or party proceeding without proper authorization will be halted if the affected party makes satisfactory arrangements to bring the activity into conformance with the permit or the apparent violation into compliance with the CWPA. The preparation and submittal of an after-the-fact permit application will be considered as a satisfactory arrangement.
- 103 If a permittee proceeds contrary to a suspension or revocation of Permit, Certificate of Exclusion, or Certificate of Waiver, the Attorney General will be requested to initiate action immediately.

Chapter 13 **Federal Consistency Reviews**

- 100 Section 307 of the Coastal Zone Management Act authorizes states to review federal actions that may have reasonably foreseeable effects on coastal uses and resources of the state's coastal zone for consistency with the enforceable policies of the state coastal management program. This authority provides states with a role in federal decision making processes and ensures that state enforceable policies pertaining to effects to uses

and resources of the state coastal zone are considered by federal agencies. The federal rules governing state reviews can be found at 15 C.F.R. Part 930 and are controlling for the processes and standards for state reviews. The categories of activities subject to review and notification procedures for each are listed in Chapters 14 through 17 below.

- 101 Upon receipt of a consistency determination, as required under 15 C.F.R. § 930.34 (for activities conducted by federal agencies) or consistency certification as required under 15 C.F.R. § 930.57 (for activities authorized by federal agencies), 15 C.F.R. § 930.76 (for outer continental shelf plans), and 15 C.F.R. § 930.94 (for federal assistance to state and local governments) along with any necessary data and information required under 15 C.F.R. § 930.58, the Department will make findings on the decision factors listed in Chapter 06 and notify the federal agency and applicant whether the Coastal Program concurs with, conditionally concurs with, or objects to the federal action.
- 102 The Department must provide a copy of the consistency determination or certification to the Coastal Program Agencies at least thirty (30) days prior to the issuance of a concurrence with, conditional concurrence with, or objection to the federal action.

Chapter 14 Activities Proposed by Federal Agencies:

- 100 The following activities conducted by or on behalf of Federal agencies are subject to review under 15 C.F.R. § 930, Subpart C. Federal agencies are required to submit either a consistency determination or negative determination to the Department for each of the listed activities below:

100.01 U.S. Army Corps of Engineers:

100.01.01 Dredging, channel works, breakwaters, other navigation works, erosion control structures, flood protection, beach replenishment, and dams within the coastal zone.

100.01.02 Proposed federal acquisitions within the coastal zone.

100.02 Department of the Interior:

100.02.01 Proposed Bureau of Ocean Energy Management OCS lease.

100.02.02 Proposed National Park Service acquisitions within the coastal zone.

100.03 Department of Defense:

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- 100.03.01 Location and design of new or enlarged defense installations within the coastal zone.
 - 100.04 Department of Transportation:
 - 100.04.01 Location and design of new or enlarged Coast Guard stations, bases and lighthouses within the coastal zone.
 - 100.04.02 Location and design of aviation communication and air navigation facilities within the coastal zone.
 - 100.04.03 Railroad expansions, new construction, abandonments, or establishment of new routes within or affecting the coastal zone.
 - 100.05 General Services:
 - 100.05.01 Proposed federal government property acquisition and building construction within the coastal zone.
 - 100.05.02 Disposal of surplus federal lands within the Coastal Zone.
 - 100.06 National Marine Fisheries:
 - 100.06.01 Approval of plans and implementing mechanisms pursuant to management of fisheries within the Coastal Zone.
 - 100.07 Department of Energy:
 - 100.07.01 Fossil fuel power plant conversion orders.

Chapter 15 Federal Licenses and Permits:

- 100 Except for Outer Continental Shelf (OCS) related permits and licenses described in detail in an OCS plan, applications for federal licenses or permits listed below or for renewal or amendments to such licenses or permits are subject to review in accordance with 15 C.F.R. § 930, Subpart D. As required at 15 C.F.R. § 930.57, Federal license and permit applicants must provide a consistency certification that the proposed activity is consistent with the enforceable policies of the coastal program, along with any necessary data and information required at 15 C.F.R. § 930.58. The certification must be provided to the DMR.

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- 100.01 Environmental Protection Agency:
 - 100.01.01 Permits and licenses required under Sections 402 and 404 of the Federal Water Pollution Control Act of 1972 and Amendments.
 - 100.01.02 Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.
 - 100.02 U.S. Army Corps of Engineers:
 - 100.02.01 Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899.
 - 100.02.02 Permits and licenses required under Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Ocean Dumping).
 - 100.02.03 Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and Amendments.
 - 100.03 Nuclear Regulatory Commission:
 - 100.03.01 Permits and licenses required for siting construction and operation of nuclear power plants, fuel processing, and disposal of nuclear wastes.
 - 100.04 Bureau of Ocean Energy Management:
 - 100.04.01 Permits and licenses required for mining of public lands pursuant to the OCS Lands Act, if such permits and licenses have not been previously reviewed under an OCS plan.
 - 100.04.02 Permits to drill, rights of use and easements for construction and associated structures, described in detail in OCS plans.
 - 100.05 Bureau of Safety and Environmental Enforcement:
 - 100.05.01 Permits and licenses required for pipeline corridors pursuant to the OCS Lands Act, if such permits and licenses have not been previously reviewed under an OCS plan.
 - 100.05.02 Permits for maintenance of pipelines, gathering and flow lines and associated structures, described in detail in OCS plans.

100.06 Geological Survey:

100.06.01 Permits and licenses under the Mineral Leasing Act of 1920, as amended and supplemented, Acquired Lands Mineral Leasing Act of 1947 and Geothermal Steam Act of 1970.

100.07 U.S. Coast Guard:

100.07.01 Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534.

100.07.02 Permits for deepwater ports (33 CFR 158 et al.).

100.08 Federal Energy Regulatory Commission:

100.08.01 Licenses for non-federal hydroelectric projects and primary transmission lines under the Federal Power Act, including projects in the coastal zone.

100.08.02 Orders for interconnection of electric transmission facilities under the Federal Power Act.

100.08.03 Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities including both interstate pipelines and LNG terminal facilities under the Natural Gas Act.

100.09 Department of Energy:

100.09.01 Authorization for import or export of natural gas.

100.10 Fish and Wildlife Service:

100.10.01 Endangered species permits pursuant to the Endangered Species Act.

Chapter 16 OCS Exploration, Development, and Production Activities:

100 The submission and review of consistency certifications for OCS exploration, development, and production activities shall follow the requirements of 15 C.F.R. § 930, Subpart E.

Chapter 17 Federal Assistance to State and Local Governments:

- 100 The Federal assistance activities to State and local government entities listed below are subject to review under 15 C.F.R. § 903, Subpart F. The applicant shall provide a consistency certification to the Department.
- 101 Notice of concurrence with, conditional concurrence with, or objection to the consistency certification will be provided no later than sixty (60) days following receipt of the consistency certification. Coastal Program consistency may be presumed if no response is received within the sixty-day (60-day) comment period.
- 101.01 Environmental Protection Agency
- 101.01.01 66.418 – Construction Grants for Wastewater Treatment Works
- 101.01.02 66.460 – Nonpoint Source Implementation Grants
- 101.01.03 66.468 – Capitalization Grants for Drinking Water State Revolving Funds
- 101.01.04 66.475 – Gulf of Mexico Program
- 101.02 Department of Agriculture
- 101.02.01 10.760 – Water and Waste Disposal Systems for Rural Communities
- 101.02.02 10.763 – Emergency Community Water Assistance Grants
- 101.02.03 10.770 – Water and Waste Disposal Loans and Grants (Section 306C)
- 101.02.04 10.904 – Watershed Protection and Flood Prevention
- 101.03 Department of Commerce
- 101.03.01 11.300 – Investments for Public Works and Economic Development Facilities
- 101.03.02 11.407 – Interjurisdictional Fisheries Act of 1986
- 101.03.03 11.427 – Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program
- 101.03.04 11.441 – Regional Fishery Management Councils
- 101.04 Department of Housing and Urban Development

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- 101.04.01 14.218 – Community Development Block Grants/Entitlement Grants
- 101.04.02 14.228 – Community Development Block Grants/State’s Program
- 101.04.03 14.239 – Home Investment Partnerships Program
- 101.04.04 14.248 – Community Development Block Grants_Section 108 Loan Guarantees
- 101.04.05 14.265 – Rural Capacity Building for Community Development and Affordable Housing Grants
- 101.05 Department of the Interior
- 101.05.01 15.154 – 21st Century Conservation Service Corps
- 101.05.02 15.230 – Invasive and Noxious Plant Management
- 101.05.03 15.231 – Fish, Wildlife, and Plant Conservation Resource Management
- 101.05.04 15.408 – Bureau of Ocean Energy Management Renewable Energy
- 101.05.05 15.524 – Recreation Resources Management
- 101.05.06 15.546 – Youth Conservation
- 101.05.07 15.605 – Sport Fish Restoration
- 101.05.08 15.608 – Fish and Wildlife Management Assistance
- 101.05.09 15.625 – Wildlife Conservation and Restoration
- 101.05.10 15.630 – Coastal
- 101.05.11 15.631 – Partners for Fish and Wildlife
- 101.05.12 15.632 – Conservation Grants Private Stewardship for Imperiled Species
- 101.05.13 15.634 – State Wildlife Grants
- 101.05.14 15.656 – Recovery Act Funds – Habitat Enhancement, Restoration and Improvement

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- 101.05.15 15.658 – Natural Resource Damage Assessment, Restoration and Implementation
 - 101.05.16 15.663 – National Fish and Wildlife Foundation
 - 101.05.17 15.664 – Fish and Wildlife Coordination and Assistance
 - 101.05.18 15.668 – Coastal Impact Assistance
 - 101.05.19 15.676 – Youth Engagement, Education, and Employment
 - 101.05.20 15.916 – Outdoor Recreation, Acquisition, Development and Planning
 - 101.05.21 15.931 – Conservation Activities by Youth Service Organizations
 - 101.05.22 15.944 – Natural Resource Stewardship
 - 101.06 Gulf Coast Ecosystem Restoration Council
 - 101.06.01 87.051 – Gulf Coast Ecosystem Restoration Council Comprehensive Plan Component Program
 - 101.06.02 87.052 – Gulf Coast Ecosystem Restoration Council Oil Spill Impact Program

Chapter 18 **State Agency Actions Subject to Review**

- 100 All State actions listed in this section are considered reviewable unless otherwise determined to be consistent. Agency actions not listed in this section are not subject to these policy coordination procedures. However, state agency actions taken pursuant to laws adopted after the promulgation of these procedures will be subject to review until a determination is made to the contrary.
- 101 In accordance with M.C.A. § 57-15-6 all state agencies must carry out their responsibilities in the coastal area in compliance with the PROGRAM unless otherwise prohibited by law. Some of these actions are reviewable and therefore subject to the entire review procedure. Some may be considered consistent, and therefore subject only to notification. State agencies are encouraged to determine by interagency agreement those actions that are consistent. Any reference to state agencies also includes their boards and commissions.

102 Agencies proposing reviewable actions must submit such actions for review at least sixty (60) days prior to such action, provided that surface mining permits issued through the DEQ will have a forty-five-day (45-day) review period so that reviews under these policy coordination procedures do not conflict with the statutory review time for such permits. Reviewable actions are listed below:

102.01 Department of Environmental Quality-Office of Pollution Control:

102.01.01 Issuance of new air or water pollution permits.

102.01.02 Renewal of such permits.

102.01.03 Substantive regulatory changes, including but not limited to changes in the designation of water quality areas, and modifications to water quality parameters for these areas.

102.01.04 Financial assistance administered through the Office of Pollution Control.

102.01.05 The review and approval of plans and specifications for sewage collection systems for new subdivisions, extensions of municipal systems, and for new or expanded privately or publicly owned wastewater treatment facilities.

102.01.06 Procedural changes in rules and regulations.

102.02 Department of Environmental Quality-Office of Geology and Energy Resources:

102.02.01 The leasing of any state owned minerals in the coastal area at least sixty (60) days prior to the advertisement for such lease.

102.02.02 Plans or programs for mineral leasing.

102.02.03 Surface mining permits (subject to forty-five-day (45-day) review period only).

102.02.04 Permit and lease renewals.

102.02.05 Assessment documents for the DEQ Rules and Regulations Governing Leasing for Production or Extraction of Oil, Gas and other Minerals from State Owned Lands.

102.03 Department of Environmental Quality -Office of Land and Water Resources:

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- 102.03.01 Issuance of water withdrawal or impoundment permits either in the coastal area or on major coastal rivers and streams in George, Stone, or Pearl River Counties when these water diversions are not returned to the stream upstream of the coastal area.
 - 102.03.02 Delineation of capacity use areas for groundwater.
 - 102.03.03 Issuance of permits for groundwater utilization in capacity use areas.
 - 102.03.04 Permit renewals.
 - 102.04 Department of Wildlife, Fisheries and Parks:
 - 102.04.01 Planning programs for park acquisition and development land acquisitions.
 - 102.04.02 Land acquisitions.
 - 102.04.03 Plans and specifications for park development (review should take place at preliminary plan stage).
 - 102.04.04 Construction of parks.
 - 102.05 Department of Archives and History:
 - 102.05.01 Acquisition of real or personal property in the coastal area.
 - 102.05.02 Issuance of permits for state archeological landmarks.
 - 102.05.03 Renewal of permits.
 - 102.06 Secretary of State:
 - 102.06.01 Any lease of state owned or public trust lands.
 - 102.06.02 Renewals of such leases.
 - 102.07 Board of Health:
 - 102.07.01 Promulgation of rules and regulations for hazardous waste disposal and for sanitary landfills.
 - 102.07.02 Substantive changes in such rules and regulations.

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- 102.07.03 Issuance of permits for hazardous waste disposal sites and sanitary landfills.
 - 102.07.04 Renewal of permits.
 - 102.08 Department of Transportation:
 - 102.08.01 Planning programs for new or improved highway systems.
 - 102.08.02 Plans and specifications for new construction (review should take place at the preliminary plan state).
 - 102.08.03 Acquisition of land.
 - 102.08.04 Right of way clearing.
 - 102.08.05 New construction projects.
 - 102.08.06 Maintenance work that requires dredging or filling in wetlands.
 - 102.08.07 Grants, loans, or other forms of assistance awarded by the department.
 - 102.08.08 Landscaping and scenic enhancement projects.
 - 102.08.09 Removal of roadside hazards and obstacles where natural scenic qualities are affected.
 - 102.08.10 Widening and overlay projects requiring fill in wetlands.
 - 102.09 Bureau of Buildings, Ground, and Real Property Management:
 - 102.09.01 Planning programs to determine long term building needs.
 - 102.09.02 Plans and specifications for the construction of buildings (review should take place at preliminary design phase).
 - 102.09.03 Land and other property acquisition.
 - 102.09.04 Construction of projects.
 - 102.10 Institutions of Higher Learning:
 - 102.10.01 Building programs.

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- 102.10.02 Annual Sea Grant work program.
 - 102.11 Department of Marine Resources:
 - 102.11.01 Wetlands permits and renewals.
 - 102.11.02 Planning, research, acquisition and construction grants.
 - 102.11.03 Changes in rules, regulations, guidelines and procedures.
 - 102.11.04 Adoption of special area management plans.
 - 102.11.05 Oyster reef creation projects and oyster leases.
 - 102.12 Mississippi Development Authority:
 - 102.12.01 Certificates of public convenience and necessity issued in conjunction with industrial development efforts.
 - 102.12.02 Financial assistance to local governments and private parties.
 - 102.12.03 Construction activities at the Mississippi State Port at Gulfport.
 - 102.13 Oil and Gas Board:
 - 102.13.01 Permits issued for oil and gas operations in coastal wetlands, unless such operation has been considered during the review of a proposed lease in coastal wetlands.
 - 102.14 Public Service Commission:
 - 102.14.01 Certificates of public convenience and necessity issued in connection with construction activities of public utilities in the coastal area.

Chapter 19 **State Agency Action Consistency Certification**

- 100 The Department will provide a copy of the notification to the Coastal Program Agencies at least thirty (30) days prior to a determination of Coastal Zone Consistency. The Coastal Program Agencies must review the proposed action in accordance with their responsibilities as described in Chapter 20.

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- 101 Based upon Coastal Program Agency review and the consistency certification procedures in Chapter 19, the Department will notify the state agency whether or not the Coastal Program has determined the activity to be consistent to the maximum extent practicable with the PROGRAM.
- 101.01 Concurrence must be in the form of a Coastal Program Consistency Certification.
- 101.02 In the event of an objection on grounds of inconsistency with the PROGRAM, the Department will accompany the objection with reasons and supporting information. The response will describe:
- 101.02.01 How the proposed activity will be inconsistent with specific elements of the PROGRAM.
- 101.02.02 Alternative measures, if feasible, which could be adopted by the state agency to make the proposed action consistent.
- 101.02.03 The nature and necessity of additional information that would be necessary to determine the consistency of the activity or development.
- 101.03 Notice of concurrence with or objection to a Consistency Certification will be provided within forty-five (45) days of receipt of the information required for a consistency review.
- 102 In the event of disagreement, the Department will utilize any remaining portion of the review period to attempt to resolve its differences with the state agency. This Chapter pertains only to the review of state agency actions listed in Chapter 18.
- 103 The Department will issue a Coastal Program Consistency Certification if no Coastal Program Agency has objected to the proposed action on the basis of regulatory policies, guidelines, or statutes. If a Coastal Program Agency has not commented within the allotted review time, its concurrence with the proposed activity will be assumed.
- 104 Conditional Consistency Certifications may be issued by the Department if requested by a Coastal Program Agency based on regulatory policies, guidelines, or statutes. The proposed action will be considered in compliance with the PROGRAM only if the specified conditions are met. A conditioned consistency certification allows a proposed action to proceed without the need for additional review, provided that the specified conditions are met.

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- 105 A Consistency Certification may be withheld without prejudice if a Coastal Program Agency finds that there is insufficient information to make a determination whether a proposed activity complies with the provisions of the PROGRAM for which such agency has statutory responsibilities, and if the Consistency Certification cannot be reasonably conditioned. A reviewing agency making such a finding must state specifically the additional information necessary to make a determination.
- 106 If a Coastal Program Agency objects to a proposed action on the basis that it does not comply with the provisions of the PROGRAM for which that agency has statutory responsibilities, then such action will not be considered in compliance with the PROGRAM. The agency proposing the action may use the Conflict Resolution Procedure in subsection 109 of this chapter to resolve coastal program compliance disputes.
- 107 At times, an action subject to review may not be ready for a determination of coastal program consistency because the notification is insufficiently specific about the activity's location and impacts. In this case, reviewing agencies must request from the applicant the additional information necessary for a determination from the applicant. The action will proceed subject to further coordination with agency requesting same.
- 108 If an agency proceeds with its proposed action over an adverse determination from a Coastal Program Agency, or if an agency refuses to comply with any required conditions, the Department will prepare a set of findings describing the proposed actions and their conflicts with the PROGRAM. This set of findings will be provided to the Attorney General with a request for appropriate action. A copy of the findings will also be provided to the agency involved in the proposed action.
- 109 If a Consistency Certification is withheld for any reason, the agency proposing the reviewable action may elect to utilize the Conflict Resolution Procedure described below:
- 109.01 The agency proposing the reviewable action must submit a written request to the Department to utilize the Conflict Resolution Procedure.
- 109.02 When an agency elects to utilize this Conflict Resolution Procedure, the objecting Coastal Program Agency must reduce its objection to writing, specifying in clear and concise terms the issues that must be resolved to achieve compliance with the PROGRAM. Representatives of the conflicting agencies must meet to resolve the

specified issues. A representative of the Department will be made available upon request to assist in the resolution.

109.03 If such a meeting does not result in resolution, the governing body of the agency objecting to the action will determine whether the proposed action is consistent with its regulatory authorities. If the governing body of a Coastal Program Agency objects to the proposed action, then it will be considered out of compliance with the PROGRAM.

109.04 Any interested party may petition the governing body of the objecting Coastal Program Agency, or the Commission to hold a hearing on an action determined to be inconsistent to hear any new information that should be brought to bear on the subject. The Commission may, in its discretion, hold such a hearing. If held by the Commission, the Commission will state its recommendations for the record. However, a Coastal Program Agency commenting within the purview of its primary jurisdiction will prevail in its regulatory comments.

Chapter 20 Coastal Program Agency Responsibilities

100 The Coastal Program Agencies must review the applications, notifications, and certifications provided in accordance with Chapter 05, Chapter 13, and Chapter 18 and will determine whether a proposed activity complies with the provisions of the coastal program for which such agencies have statutory responsibilities.

100.01 Department of Marine Resources:

100.01.01 The Department will keep a written record of all coastal program agency comments, and will prepare a consistency certification based on these comments. The Department is responsible for monitoring consistent action notifications to ensure that the proposed actions are in conformance with interagency agreements and prior reviews.

100.01.02 The Department will review and comment with respect to wetlands protection, as stated in M.C.A. § 49-27-3. The Department will base this review on the rules, regulations, guidelines, and procedures in Title 22, Part 23.

100.01.03 The Department will review and comment with respect to the efficient utilization of waterfront sites, as stated in M.C.A. § 57-15-6(1)(a). The Department will base this review on the water dependent industry guidelines.

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- 100.01.04 The Department will review and comment with respect to seafood conservation as stated in M.C.A. § 49-15-1.
 - 100.01.05 The Department will review and comment with respect to the preservation of natural scenic qualities, as stated in M.C.A. § 57-15-6(1)(d) and in accordance with the guidelines.
 - 100.01.06 The Department will review and comment with respect to the national interest as stated in M.C.A. § 57-15-6(1)(c).

100.02 Department of Environmental Quality:

- 100.02.01 The DEQ Office of Pollution Control will review and comment on the proposed state and federal actions with respect to preserving air and water quality, as stated in M.C.A. § 49-17-3. This review will consider as program standards the provisions of the Clean Water Act and the Clean Air Act, as well as the provisions of state laws and regulations implementing these Acts.
- 100.02.02 The DEQ Office of Land and Water Resources will review and comment on proposed state and federal actions with respect to the coastal program goal of conserving water resources, as stated in M.C.A. § 51-3-1 *et seq.* Water occurring in any watercourse, lake, or other natural water body in the coastal area is among the basic resources of this state and subject to appropriation in accordance with applicable state statutes. The DEQ Office of Land and Water Resources will review and comment on groundwater withdrawals to the extent that coordination and limited regulation would be necessary to protect the interest and rights of residents or property owners in accordance with M.C.A. § 51-3-1 *et seq.*

100.03 Department of Archives and History:

- 100.03.01 The Department of Archives and History will review and comment on proposed actions with respect to the coastal program goal of preserving historical and archeological resources, as stated in M.C.A. § 39-7-3.
- 100.03.02 The state's comprehensive historic preservation plan will be considered in this review.

101 The Coastal Program Agencies must:

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- 101.01 State whether they object or do not object to issuance of a permit for the proposed regulated activities and, in the case of an objection, state the specific reasons for this objection.
 - 101.02 Request any additional information or time needed to complete their analysis of the application.
 - 101.03 State specifically any conditions they require to be included in a permit, if issued, including the policies, guidelines, or statutes on which these conditions are based.
 - 101.04 Include any information they request that the Department and/or Commission consider when determining whether to issue, deny, or conditionally approve a permit application.
 - 101.05 Consider the direct effects of the proposed action, as well as the indirect or induced effects. If, in the opinion of the reviewing agency, unintended induced effects can be reasonably expected, the reviewing agency will consider these effects in its review.
- 102 If a Coastal Program Agency has not commented within the allotted review time, its concurrence with the proposed activity will be assumed.
- 103 Agencies other than Coastal Program Agencies are encouraged to review and comment on proposed actions, but such comments will be considered as informational comments.

Chapter 21 **Special Management Area Plans**

- 100 The purposes of special management area designation are:
- 100.01 To apply the general provisions of the coastal program to specific geographical areas
 - 100.02 To streamline regulatory decisions in these areas through planning for and resolving permit conflicts in advance of individual development projects being implemented
 - 100.03 To coordinate federal and state regulatory decisions with the affirmative development efforts of the coastal program and of local governments

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- 100.04 To provide assistance to local governments and state agencies to plan for public facilities and services in areas whose use is historically, economically, and culturally tied to coastal waters
- 101 A SMA designation does not authorize the imposition of new regulatory authorities. SMA designations are not mandatory and will not be construed to require local governments to agree to a plan for an area. SMA plans will not be adopted by the Commission without the concurrence of the local government or state agency having jurisdiction.
- 102 Those SMAs identified in the PROGRAM as of the date these procedures and guidelines are adopted, are designated as SMAs. The following process will be used to designate additional SMAs.
- 102.01 An area may be nominated by a concerned agency, organization, or person. The nomination must include a specific description of the area and a justification for the nomination.
- 102.02 The Department will conduct an examination of the nomination to determine its merits, and more specifically to determine whether a SMA designation is needed to manage the area properly in light of the purposes specified in this chapter. A public hearing may be held at the discretion of the Executive Director. After completing its examination of the nomination, the Department will make a recommendation to the Commission as to whether the nominated areas should be designated as a SMA.
- 102.03 The Commission may act on the Department's recommendation.
- 103 The responsible local government and the Commission, acting through the Department, will enter into an agreement to develop a SMA Plan. The agreement may be at the initiative of either party. The agreement must state the scope of work to be performed, the responsibilities of the parties involved, and the nature of any involvement with other agencies or consultants.
- 103.01 Federal agencies, particularly the U. S. Army Corps of Engineers, the Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency, must be consulted and involved in the early stages of planning. The Department and the local government will jointly develop a draft of

the plan in cooperation with federal agencies, with the Department providing general oversight. During the course of the plan's development, public hearings or meetings may be held. If private lands are included in a SMA Plan, a hearing must be held.

- 103.02 The draft SMA Plan must be submitted to the local government or state agency and the Commission for concurrence, and must be submitted to appropriate federal agencies.
- 103.03 A public hearing must be held on the draft plan prior to its formal adoption. Such a hearing must be advertised and held in the manner specified in Chapter 05.
- 103.04 Based on the comments received during the public hearing, the draft plan will be revised as appropriate, and considered for final approval by the local government or agency involved, and the Commission. Upon final approval by the Commission, a notice must be published at least once a week for three weeks. The notice must describe the contents of the proposal.
- 103.05 When approved according to these procedures, the specific provisions of a SMA Plan will prevail over the more general provisions of the coastal program.
- 104 SMA Plans must define the boundaries of the area, and provide a clear description of how the physical development of the area is to be managed.
- 105 SMA Plans must recognize environmental and economic factors, and where a plan is intended to prevail over the more general provisions of the PROGRAM, the plan must include analyses of environmental impacts and alternatives comparable to that ordinarily required for permit decisions.
- 106 SMA Plans must specify the implementation responsibilities of local, state, and federal agencies, and include any interagency agreements and similar instruments necessary for carrying out the plan.

Chapter 22 **Adjustments, Variances, Amendments, and Revisions to the PROGRAM**

- 100 The Commission may from time to time make revisions to these rules, regulations, and procedures.

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- 101 Any revision must be preceded by a notice of a public hearing once a week for three consecutive weeks in a newspaper having general circulation throughout the affected area. The first notice must appear at least thirty days prior to the hearing date. Notice must also be provided to the Coastal Program Agencies at least forty-five (45) days prior to approval of the proposed change. Copies of the proposed revision must be made available at the Department when the public hearing notice is first published.
- 102 Where the proposed revision concerns the regulated activity in M.C.A. § 49-27-5(c)(v), the Department must serve a copy of the proposed revision upon the board of supervisors and port authority, development commission, or port and harbor commission in Hancock, Harrison, and Jackson Counties at least sixty (60) days prior to the public hearing.
- 103 Following the public hearing, the Commission will consider the proposed revision in light of comments made at the public hearing, and may make changes as it deems appropriate.
- 104 Before becoming effective, any revision must be published at least once a week for three (3) consecutive weeks in a newspaper having general circulation throughout the State of Mississippi and must be filed with the Secretary of State at least thirty (30) days prior to its effective date.
- 105 The Commission may make revisions to these rules, regulations, guidelines and procedures (including the Coastal Wetlands Use Plan) without the federal government's approval under the Coastal Zone Management Act of 1972, as amended. However, federal approval of revisions is desirable so that the revisions may be enforced through the federal consistency provisions of Section 307 of the Act, and so that financial assistance may be secured to implement the revisions.
- 106 Parties other than the Commission desiring to revise or contest the making of any rule, regulation, guideline, or procedure must observe the following procedures. Proposed revisions or contests must be filed with the Department in writing, along with any explanatory material deemed appropriate by the party requesting the change. The Department will evaluate the proposed revision and report its findings to the Commission. The Commission will determine whether the proposed revisions, or some variation thereof, have merit. It may then institute the procedure for revisions. If the Commission declines to implement a requested change, the party requesting the change will be notified of that decision and the reasons thereof.

107 The Commission may issue corrections to these rules, regulations, guidelines, and procedures without public hearing by carrying out the requirements above. Corrections are limited to obvious compilation errors, errors in cross references, and changes in nomenclature.

Chapter 23 **Administrative Procedures**

100 Each chapter and subchapter of this Part is separable. If any chapter, subchapter or part is held invalid or unconstitutional, the balance of the Part remains in full force and effect.