

MISSISSIPPI¹

State Authority for Marine Protection

Summary of State Authorities

Mississippi has several options for conserving marine habitat; however, state agencies have not yet fully employed this authority. The state’s Department of Marine Resources has not used its fisheries authority to create Marine Sanctuaries; and the Department of Wildlife, Fisheries, and Parks has not designated any Wildlife Management Areas that protect marine habitat, nor does that agency have funding to acquire conservation lands under the Nongame and Endangered Species Conservation Act. The Department of Marine Resources has, however, created the Coastal Preserves Program to acquire coastal habitat, and the agency also operates a coastal wetlands permitting program.

	Coastal Preserves Program	Fisheries Management, Marine Sanctuaries and Closures	Coastal Wetlands Protection Act	Wildlife Management Areas	Nongame and Endangered Species Conservation Act
Legal requirement	State acquisition program for conservation land	Allows restrictions for fisheries management	Coastal wetlands permitting program	State acquisition program for conservation land	State acquisition program for conservation land
Citation ²	MEMORANDUM OF UNDERSTANDING BETWEEN MISSISSIPPI SECRETARY OF STATE AND MISSISSIPPI DEPARTMENT OF MARINE RESOURCES (1992)	MISS. CODE ANN. § 49-15-1 (1960)	MISS. CODE ANN. §§ 49-27-1 (1973)	MISS. CODE ANN. § 49-5-11 (1932)	MISS. CODE ANN. §§ 49-5-101 (1974)
Designation authority	Mississippi Department of Marine Resources (MDMR)	MDMR	MDMR	Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP)	MDWFP
Management & enforcement authority	MDMR and partner agencies and organizations	MDMR	MDMR	MDWFP	MDWFP
Jurisdiction & boundaries	Estuaries, coastal lands, beaches and dunes	All state waters	Coastal wetlands	Estuaries, coastal lands, beaches and dunes	Estuaries, coastal lands, beaches and dunes
Prohibited uses	None specified	Mississippi Department of	None specified	None specified	None specified

¹ This state chapter is part of a 23-state assessment of state and local authority for marine protection. It should be read in conjunction with the Executive Summary, Introduction and Methodology Chapters in order to fully understand the scope and approach. Other chapters are available at www.eli-ocean.org/mpa.

² The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

	Coastal Preserves Program	Fisheries Management, Marine Sanctuaries and Closures	Coastal Wetlands Protection Act	Wildlife Management Areas	Nongame and Endangered Species Conservation Act
		Marine Resources has authority to develop rules related to use			
Permitted uses	Recreational uses such as boating, fishing, and fowling	None specified	None specified	None specified	None specified

Mississippi’s jurisdiction over its coastal waters extends three nautical miles seaward from the mean high-tide line, including all submerged lands that are naturally affected by the tide.³ The state passed the Mississippi Public Trust Tidelands Act in 1989, with the dual goals of resolving uncertainty about the boundaries of the state’s public trust lands and of preserving the tidelands in public trust.⁴

Coastal Preserves Program

Beginning in 1992, the Mississippi Department of Marine Resources (“MDMR”) has used its authority under the Coastal Wetlands Protection Act⁵ to operate its Coastal Preserves Program in order to acquire, protect, and manage sensitive coastal habitats.⁶ The program currently oversees 20 coastal preserves, totaling 72,000 acres, of which the state has title to approximately 30,000 acres. The Department implements the program in partnership with the Mississippi Secretary of State’s Office, the Nature Conservancy, the U.S. Fish and Wildlife Service, the Grand Bay National Estuarine Research Reserve, and other state, local, and federal agencies.⁷

For example, MDMR manages the Bayou Portage Coastal Preserve to protect an estuarine marsh along Bayou Portage in Harrison County.⁸ Subject to conditions in general state regulations and the rights of private property owners, recreational uses are allowed, such as boating, fishing, and fowling.

Fisheries Management, Marine Sanctuaries and Closures

The Mississippi seafood laws declare a state policy “to recognize the need for a concerted effort to work toward the protection, propagation and conservation of [Mississippi’s] seafood and aquatic life in connection with the revitalization of the seafood industry.”⁹ MDMR has authority to promulgate “rules and regulations necessary for the protection, conservation or propagation of all seafood in the waters under the territorial jurisdiction of the State of Mississippi and for the regulation of gill net and purse

³ See Submerged Lands Act of 1953, 43 U.S.C. §§ 1301–1315.

⁴ MISS. CODE ANN. § 29-15-3. The Secretary of State is the trustee of all state-owned lands. *Columbia Land Dev., LLC v. Sec. of State of Miss.*, 868 So. 2d 1006 (Miss. 2004) (affirming the lower court’s decision) (citing *Sec. of State of Miss. v. Wiesenberg*, 633 So. 2d 983, 997 (Miss. 1994); MISS. CODE ANN. §§ 7-11-11, 29-1-1 *et seq.*).

⁵ MISS. CODE ANN. § 49-27-1 *et seq.* (1973).

⁶ Miss. Dep’t of Marine Res., Coastal Preserves, <http://www.dmr.state.ms.us/eco-tourism/coastal-preserves> (last visited Apr. 11, 2013).

⁷ MEMORANDUM OF UNDERSTANDING BETWEEN MISSISSIPPI SECRETARY OF STATE AND MISSISSIPPI DEPARTMENT OF MARINE RESOURCES (1992), <http://www.dmr.state.ms.us/images/coastal-preserves/mou-msos-mdmr.pdf>.

⁸ Miss. Dep’t of Marine Res., Bayou Portage Preserve, <http://www.dmr.ms.gov/mississippi-gems/205-bayou-portage> (last visited Apr. 11, 2013).

⁹ MISS. CODE ANN. § 49-15-1 (1960).

seine fishermen.”¹⁰ These powers include authority to develop limited-entry fisheries management programs for each marine resource, which may entail licensing requirements or the imposition of moratoria on new licenses.¹¹ MDMR is also responsible for enforcement and day-to-day management activities.¹²

The state’s commercial fishing laws include various area-based species protections. For example, it is unlawful to use large (> 12 feet) brill and cast nets in state marine waters, or to use gill or trammel nets in waters north of Highway 90, which parallels the coast along much of the state.¹³ The Department also has authority over mussel bed closures, and “may close any beds to operators at any time and for such length of time as it deems necessary.”¹⁴

The state legislature has taken special steps to protect the Pascagoula River System, which includes estuarine habitat. Subject to certain exceptions, the statute bans commercial crabbing, oyster harvesting, shrimping, and saltwater fishing north of a certain point in Jackson County.¹⁵

MDMR also has the authority to establish marine sanctuaries in order to protect the state’s fishing resources.¹⁶ However, the Department has not yet established any sanctuaries under this law. By statute, sanctuaries must support prudent fisheries management, research, and the overall public interest. Further, the statute states that the Department must establish nursery grounds in estuaries and bays for the same purpose.¹⁷ The Gulf Coast Research Laboratory must complete studies and may recommend creating nursery grounds if deemed necessary to protect the resources.¹⁸

Coastal Wetlands Protection Act

The Coastal Wetlands Protection Act serves to protect state-owned coastal wetlands that sit below the high-tide mark, along with related ecosystems.¹⁹ The Act establishes a policy that coastal wetlands shall be preserved in their natural state unless an alteration would serve a higher public interest.

Permitting activities are conducted through MDMR’s Bureau of Wetlands Permitting. Private and public actors must obtain a permit from MDMR before conducting any of the following activities: dredging, filling, materially damaging flora or fauna, or erecting certain structures.²⁰ Enforcement of the Act is performed by the Commission on Marine Resources, which may conduct inspections and revoke or suspend permits if applicants fail to comply with permit conditions.²¹

¹⁰ *Id.* § 49-15-15(1)(b).

¹¹ *Id.* §§ 49-15-15 to -16.

¹² *Id.* §§ 49-15-1 to -321. Laws governing mussels are codified separately from other seafood laws, but the regulatory regimes are very similar. *Id.* §§ 49-9-1 to -17.

¹³ *Id.* §§ 49-15-95, 49-15-100.

¹⁴ *Id.* § 49-9-13.

¹⁵ *Id.* § 49-15-315. The prohibition applies in the Pascagoula River System north of the CSX Railroad in Jackson County, Mississippi. *Id.* § 49-15-315(1).

¹⁶ *Id.* § 49-15-321 (1994).

¹⁷ *Id.* §§ 49-15-315.

¹⁸ *Id.* § 49-15-321.

¹⁹ MISS. CODE ANN. §§ 49-27-3, 49-27-5 (1973) (defining “coastal wetlands”).

²⁰ *Id.* § 49-27-5 (defining “Regulated activity”).

²¹ *Id.* §§ 49-27-63, 49-27-33.

Wildlife Management Areas

The Mississippi Department of Wildlife, Fisheries, and Parks (“MDWFP”), manages the state’s hunting and fishing refuges, otherwise known as Wildlife Management Areas (“WMAs”).²² The Department has rulemaking authority over WMAs.²³ Expansion and acquisition of WMAs is achieved through purchases by the Department, many of which are paid for through the Wildlife Conservation Fund.²⁴ Despite WMAs’ potential to protect the marine environment,²⁵ MDWFP has not yet applied this authority to protect marine or coastal habitat.

Nongame and Endangered Species Conservation Act

Mississippi’s counterpart to the federal Endangered Species Act is the Mississippi Nongame and Endangered Species Conservation Act, administered by MDWFP. The Act covers all federally protected species and any species that the Commission on Wildlife, Fisheries, and Parks classifies as endangered.²⁶ Any person who kills, harasses, or captures an endangered species without a permit may be punished through fines or imprisonment.²⁷

Moreover, the Act states that the Commission “shall establish such programs, including acquisition of land or aquatic habitat, as are deemed necessary for management of nongame and endangered wildlife.”²⁸ However, there is no dedicated source of funding or mechanism for raising state funds to acquire conservation lands. One option the state currently has would be to fund these activities through the Foundation of Mississippi Wildlife, Fisheries, and Parks, which is a nonprofit organization that provides financial support for MDWFP projects in order to help conserve Mississippi wildlife.²⁹

Evaluation of State Authorities³⁰

FACTORS	Coastal Preserves Program	Fisheries Management, Marine Sanctuaries and Closures	Coastal Wetlands Protection Act	Wildlife Management Areas	Nongame and Endangered Species Conservation Act
Legal Regime	Incentive-based ★★	Regulatory ★★★★★	Regulatory ★★★★★	Regulatory ★★★★★	Regulatory ★★★★★
Ocean Jurisdiction	Estuarine ★★	All marine waters ★★★★★	Estuarine ★★	Estuarine ★★	Estuarine ★★
Durability	Indeterminate ★★	Indeterminate ★★	Indeterminate ★★	Indeterminate ★★	Indeterminate ★★
Consistency	Indeterminate ★★	Authorizes year- ★★★★★	Authorizes year- ★★★★★	Indeterminate ★★	Indeterminate ★★

²² MISS. CODE ANN. § 49-5-11 (1932).

²³ *Id.* § 49-5-13.

²⁴ *Id.* § 49-5-77.

²⁵ *Id.* § 49-5-11 (the Department has the authority to purchase “land necessary and requisite for the construction and maintenance of game and fish management projects or game and fish hunting and fishing refuge”); *Id.* § 49-5-13 (the Department “shall have general authority to operate such wildlife conservation management areas or refuges,” including rulemaking authority over WMAs).

²⁶ MISS. CODE ANN. §§ 49-5-101 to -119 (1974).

²⁷ *Id.* § 49-5-105(i) (defining take).

²⁸ *Id.* § 49-5-111 (emphasis added).

²⁹ Foundation for Mississippi Wildlife, Fisheries and Parks, Mission, <http://www.foundationmwfp.com/mission.aspx> (last visited Apr. 12, 2013).

³⁰ For an explanation of the evaluation matrix and criteria, please see the Introduction and Methodology Chapters.

FACTORS	Coastal Preserves Program	Fisheries Management, Marine Sanctuaries and Closures	Coastal Wetlands Protection Act	Wildlife Management Areas	Nongame and Endangered Species Conservation Act
		round protection	round protection		
Habitat	Habitat protection goal ★★★★★	Byproduct is habitat protection ★★	Habitat protection goal ★★★★★	Habitat protection goal ★★★★★	Habitat protection goal ★★★★★
Sector	Managed	Authorizes single-sector protection ★	Authorizes multi-sector protection ★★★★★	Managed	Managed
Enforcement	No MPA-specific enforcement ★	Grants MDMR authority to enforce chapter & arrest offenders or issue citations ★★★★★	No MPA-specific enforcement ★	Grants MDWFP authority to enforce chapter & arrest offenders or issue citations ★★★★★	No MPA-specific enforcement ★
Extent (Scope)	Multi-site, potential expansion ★★★★★	Authority not currently used to protect coastal or marine areas	Single-site permitting ★	Authority not currently used to protect coastal or marine areas	Authority not currently used to protect coastal or marine areas
Process for designation or expansion	No MPA-specific public process ★★	No MPA-specific public process ★★	No MPA-specific public process ★★	No MPA-specific public process ★★	No MPA-specific public process ★★

Local Authority for Marine Protection

Summary of Local Authorities

Local governments have only limited authority to protect Mississippi’s marine environment. The two options available—land acquisitions and management authority over manmade beaches—are not being fully utilized by local governments.

	Land Acquisition	Manmade Beaches
Legal requirement	Authority to fund land acquisition	Authority to manage manmade beaches
Citation ³¹	n/a	n/a
Designation authority	County and municipal governments	County governments
Management & enforcement authority	County and municipal governments	County governments
Jurisdiction & boundaries	Estuaries, coastal lands, beaches and dunes	Beaches
Prohibited uses	None specified	None specified
Permitted uses	None specified	None specified

³¹The citation date provided is the earliest date of enactment and does not reflect subsequent amendments unless otherwise noted. The enactment date is meant to inform the reader of how long the protection authority has existed.

Land Acquisitions

Local governments have the authority to raise revenue for land acquisition through general obligation bonds. However, it does not appear that any city or county on the Mississippi coast has used this authority to fund habitat conservation.³²

Manmade Beaches

Along with the U.S. Army Corps of Engineers (as part of its property protection mission), county governments are responsible for managing the manmade beaches that line mainland Mississippi. Mississippi has a highly engineered coastline—almost half the state’s 80 miles of coastline is made up of artificial beaches, with a total area of approximately 700 acres.³³ Local governments may be able to use this authority to protect coastal marine habitat.

Evaluation of Local Authorities

FACTORS	Land Acquisition	Manmade Beaches
Legal Regime	Incentive-based ★★	Voluntary ★
Ocean Jurisdiction	Beach, tidal only ★	Beach, tidal only ★
Durability	Indeterminate ★★★	Indeterminate ★★★
Consistency	Indeterminate ★★★	Indeterminate ★★★
Habitat	Byproduct = protecting habitat ★★★	Byproduct = protecting habitat ★★★
Sector	Managed	Managed
Enforcement	Voluntary, with assistance/ incentives	No enforcement provisions
Extent (scope)	Shoreland-by-shoreland, local management ★	Shoreland-by-shoreland, local management ★
Process for expansion	No MPA-specific public process ★★★	No MPA-specific public process ★★★

³² Conservation Almanac, Mississippi Profile of State Programs and Policy Framework, <http://www.conservationalmanac.org/secure/almanac/southeast/ms/programs.html> (last visited Apr. 12, 2013).

³³ Miss. Dep’t of Wildlife, Fisheries & Parks, Mississippi’s Comprehensive Wildlife Conservation Strategy 2005–2015 (2005), at 237, <http://www.mdwfp.com/media/63792/cwcs.pdf/>.