

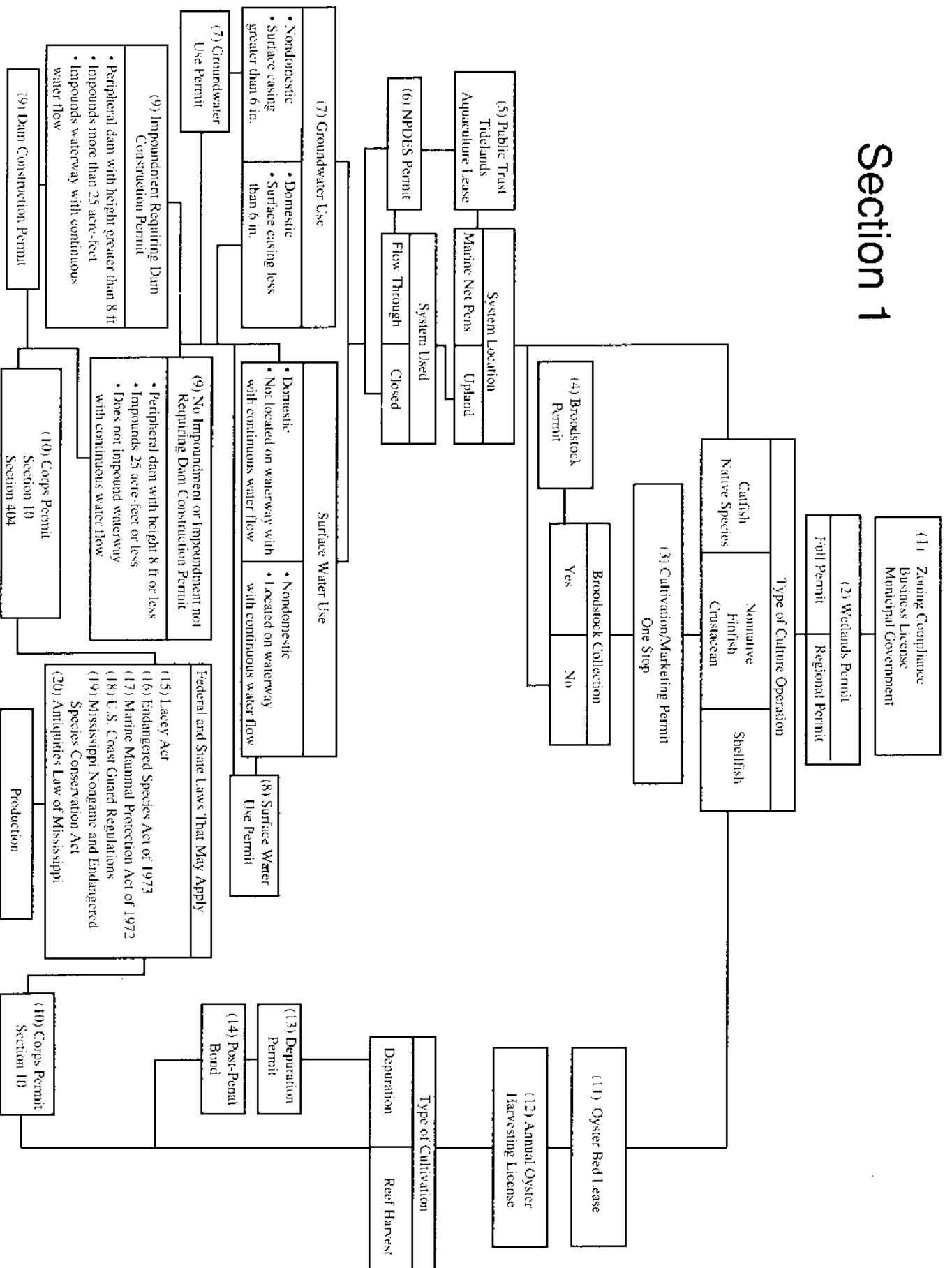
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A Guide To
Aquaculture Permitting
In Coastal Mississippi

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Section 1



Section 2

Introduction

Aquaculture is defined as the process of growing, farming, cultivating, and/or harvesting cultured aquatic products in marine or freshwaters. The purpose of this guide is to assist prospective aquaculturists to better understand the laws and permitting procedures applicable to aquaculture operations in Coastal Mississippi.

In most instances, several regulatory agencies are involved in permit decisions. A variety of federal, state, and local permits may be required, depending on individual circumstances, such as the location of the proposed aquaculture facility, the kinds of aquatic products involved, and the potential impact on the environment. As a result, the permit process is sometimes complex and time-consuming.

It is intended that this guide serve only as a general introduction to the current regulatory regime governing aquaculture in the Coastal Mississippi counties. Laws and regulations are constantly changing. Therefore, it is important that prospective aquaculturists contact the relevant permitting agencies as early as possible for preapplication meetings. Permitting officials can explain the process fully and can ensure that all laws and procedures are satisfied in the least amount of time.

How To Use This Guide

This guide is organized in two sections. **Section One** consists of a flow chart that outlines the steps necessary to obtain the required permits. By following the chart from top to bottom, users should be able to determine which permits are necessary, depending on the requirements of their individual aquaculture operations. The numbers located adjacent to the various entries on the chart correspond to summaries found in **Section Two**. These brief summaries provide descriptions of the various permits, procedures for obtaining them, and addresses for the appropriate permitting agencies.

Included in the flow chart and subsequent summaries are other federal or state laws that could be applicable under certain circumstances. Their inclusion in the guide is to alert the prospective aquaculturist of the existence of these laws so that they may plan accordingly.

1. County Land Use Ordinances

The prospective aquaculturist should contact the appropriate county planning department to ensure that he has complied with all applicable county and municipal zoning and construction ordinances. A business license and tax certificate also may be required.

Harrison County Planning Dept.
15309 Community Road
Gulfport, MS 39503
Telephone: (601) 832-6216

Jackson County Planning Dept.
600 Covent Street
Pascagoula, MS 39567
Telephone: (601) 769-3056 or 769-3057

Hancock County Planning Commission
P.O. Drawer 71
Bay St. Louis, MS 39520
(601) 467-5481

2. Wetlands Permit

The Mississippi Coastal Wetlands Protection Law requires a permit for all activity affecting any coastal wetland, unless specifically exempted. Generally, any aquaculture operation or seafood processing structure to be sited in an area below the watermark of ordinary high tide, in filled coastal wetlands, or in areas suitable for water-dependent industries must obtain a permit from the Bureau of Marine Resources (BMR). All offshore aquaculture activities require this permit.

Permit applications must be submitted on prescribed forms containing the following information:

- The names and addresses of applicants and present owners of record of adjacent land;
- A detailed description of the proposed activity and a map;
- An estimate of the cost of the activity;
- The primary purposes of the project and any reasonably anticipated future effects;
- A description of any public benefit to be derived from the proposed project;
- A description of measures taken to reduce detrimental off-site effects to coastal wetlands;
- The expected completion date of the proposed activity;
- An environmental assessment addressing the project's effect on the wetlands on life dependent upon them; and
- A certification stating that permits from the Bureau of Pollution Control and the U.S. Army Corps of Engineers have been applied for or are not required.

After public notice and an optional public hearing, BMR recommends approval, conditional approval, or denial of the permit request to the Commission for Wildlife, Fisheries and Parks. Proposed major construction or activities proposed under this permit require review by the state and federal agencies with regulatory authority over the proposed activity and public comment. The Bureau of Marine Resources is the first point of contact and coordinator of this review and comment process.

An application fee of \$500 for commercial and industrial regulated activity and \$50 for residential activity is required.

A Mississippi Coastal Zone Regional Permit may be substituted for the full permit where minor structures (e.g., piers,

intake structures, or activities) take place in state waters within the regulatory boundaries of the Corps of Engineers (CE). The regional permit can be granted without undergoing the CE permit review process.

Mississippi Dept. of Wildlife, Fisheries and Parks
Bureau of Marine Resources
Coastal Management Section
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

References

Coastal Wetlands Protection Law, Miss. Code Ann. Section 49-25-5 et seq. (1988)

Mississippi Coastal Program (revised October 1988) (available at Bureau of Marine Resources office)

Miss. Code Ann. Section 49-27- 7(c), Section 49-27-7

3. Cultivation/Marketing Permit

The Mississippi Aquaculture Act of 1988, as amended in 1991, required that aquaculturists obtain a permit for cultured aquatic products of the following variety:

- All nonnative aquatic plants and animals;
- Fish classified as game fish, except black bass, bream, crappie, flathead catfish, walleye, and all members of the family Centrarchidae and Percidae;
- Endangered, threatened, or protected species; and
- Any aquatic plant or animal genetically modified by means other than breeding or crossbreeding.

Catfish and all native shellfish, such as oysters, are exempt from the permit requirement.

Cultivation/Marketing Permits can be requested from the Mississippi Department of Agriculture and Commerce. An application fee of \$100 is required. The permit is subject to a nonrefundable fee of \$100 for annual review and renewal of the permit.

A streamlined one-stop permitting process is employed to obtain all required state and federal permits. Only U.S. citizens are eligible to receive the permit.

Mississippi Department of Agriculture and Commerce
Bureau of Fisheries
P.O. Box 1609
Jackson, MS 39215-1609
Telephone: (601) 354-7050

References

Mississippi Aquaculture Act of 1988, Miss. Code Ann. Section 79-22-1 et seq. (Supp. 1991)

4. Broodstock Collection Permit

A Broodstock Collection Permit is required if the aquaculturist intends to harvest certain species from natural waters using methods not covered under existing sportfishing or commercial fishing regulations. Permit is issued on a case-by-case basis, contingent on appropriate compensation in the form of restocking certain waters or monetary payment to the State.

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Fisheries
P.O. Box 451
Jackson, MS 39205
Telephone: (601) 961-5342

References

Mississippi Aquaculture Act of 1988 (Supp. 1991), Miss. Code Ann. Section 79-22-15 (1988)

5. Public Trust Tidelands Aquaculture Lease

Aquaculture activities that propose to use the water column or sea bottom under this permit require an aquaculture lease from the Secretary of State's office. Owners of residential waterfront properties may exercise certain specified littoral/riparian rights, including use of the bottom for oyster culture. Aquaculture leases are required, however, for commercial and/or industrial use of littoral or riparian rights.

Applications for the aquaculture lease can be obtained from the Secretary of State's office and should contain the following:

- Names and addresses of applicants;
- Legal description of the parcel;
- Two copies of an approved survey of the parcel;
- A detailed description of proposed activities;
- A description of the public benefit to be derived from the proposed project;
- Names and addresses of all claimants of littoral or riparian rights in the parcel or in adjacent areas, plus all lessees of adjacent property, and
- A statement of the environmental effects of the proposed activity.

Aquaculture lease applications must be accompanied by a nonrefundable \$150 application fee.

The amount of annual rent is to be negotiated but will not be less than \$25 per acre. The parcel must be identified and well-marked.

Secretary of State
Public Lands Division
P.O. Box 97
Gulfport, MS 39502
Telephone: (601) 864-0254

References

- “Rules of the Secretary of State for the Administration, Control and Leasing of Public Trust Tidelands” (available from the Secretary of State’s office)
- “Guidelines for Aquaculture in the Marine Environment” (available from the Bureau of Marine Resources office)

6. State of Mississippi National Pollutant Discharge Elimination System Wastewater Permit

An aquaculture facility is subject to a National Pollutant Discharge Elimination System (NPDES) Wastewater Permit if it uses a flow-through system and will be discharging wastes into state waters at least 30 days per year and producing more than 100,000 pounds of aquatic animals per year. An NPDES permit is not required for closed-system ponds. The Mississippi Bureau of Pollution Control will determine the need for an NPDES permit for marine net-pen aquaculture on a case-by-case basis. Details may be obtained from the Mississippi Bureau of Pollution Control.

Department of Natural Resources
Bureau of Pollution Control
Southport Mall (2380 Highway 80 West)
P.O. Box 10385
Jackson, MS 39209-0385
Telephone: (601) 961-5171

References

- Mississippi Air and Water Pollution Control Law, Miss. Code Ann. Section 49-17-1 et seq. (1972 and Supp. 1988)
- State of Mississippi National Pollutant Discharge Elimination System (NPDES) Wastewater Permit (MPC-3-74) (available at Bureau of Pollution Control office)

7. Groundwater Use Permit

Mississippi requires a permit for all groundwater uses, except those specifically exempted. Exempted uses are water used for domestic purposes only and water from wells that have a surface casing less than 6 inches in diameter.

Persons using groundwater in excess of 20,000 gallons per day may be required to file monthly reports of such use.

Department of Natural Resources
Bureau of Land and Water Resources
Southport Mall (2380 Highway 80 West)
P.O. Box 20305
Jackson, MS 39209-1305
Telephone: (601) 961-5223

References

- Water Resources — Regulation and Control, Miss. Code Ann. Section 51-3-1 et seq. (1972 and Supp. 1988)
- Groundwater Use Permit for Beneficial Use (available from Bureau of Land and Water Resources office)

8. Surface Water Permit

Permits are required to divert, withdraw, or use public waters unless such use is exempted. Exemptions exist for the use of surface water in impoundments that are not located on continuous, free-flowing water courses, and for “domestic uses,” defined as use “for ordinary household purposes, the watering of farm livestock, poultry, and domestic animals, and the irrigation of home gardens and lands.” The term “livestock” is defined under Mississippi law as including domesticated fish grown and harvested in privately owned waters. Therefore, the diversion of surface waters for such fish should be exempt. However, aquaculture ventures conducted on public lands would be subject to the permit requirement. Any beneficial use of surface water, including all territorial waters claimed by the State, requires a permit. Marine net-pen aquaculture also requires a permit.

Department of Natural Resources
Bureau of Land and Water Resources
Southport Mall (2380 Highway 80 West)
P.O. Box 20305
Jackson, MS 39209-1305
Telephone: (601) 961-5208

References

- Water Resources — Regulation and Control, Miss. Code Ann. Section 51-3-1 et seq. (1972 and Supp. 1988)
- Permit to Divert or Withdraw for Beneficial Use the Public Waters (available from the Bureau of Land and Water Resources office)

9. Dam Construction Permit

Written authorization must be obtained for the construction, modification, or repair of a dam unless the dam is:

- A peripheral dam with a height of 8 feet or less, regardless of storage volume;
- Impounds 25 acre-feet or less at maximum storage volume; and
- Does not impound a water course with a continuous water flow.

Notwithstanding above exemptions, authorization must be obtained if the dam endangers lives or property.

U.S. Army Corps of Engineers
District Engineer
Mobile District
Attn: SAMOP-S
P.O. Box 2288
Mobile, AL 36628
Telephone: (205) 694-3775

References

- Section 10 of the Rivers and Harbors Act of 1899 33 U.S.C. Section 403 (1982)
- Section 401 of the Clean Water Act 33 U.S.C. Section 1341 (1982)
- Section 404 of the Clean Water Act 33 U.S.C. Section 1344 (1982)
- Mississippi Air and Water Pollution Control Law, Miss. Code Ann. Section 49-17-1 et seq. (1972 and Supp. 1988)
- "U.S. Army Corps of Engineers, Permit Program: A Guide for Applicants" (available from the Corps Mobile or Vicksburg District offices)
- Regardless of whether a construction permit for the dam is required, a surface water permit may be needed to impound and use the stored water. (See Surface Water Permit requirements).
- Department of Natural Resources
Bureau of Land and Water Resources
Southport Mall (2380 Highway 80 West)
P.O. Box 20305
Jackson, MS 39209-1305
Telephone: (601) 961-5223
- Water Resources — Regulation and Control, Miss. Code Ann. Section 51-3-39 (Supp. 1988)
- Written Authorization for Proposed Dam Construction (available from Bureau of Land and Water Resources office)

10. Corps Section 10 and Section 404 Permits

An aquaculture facility that will involve locating a structure in navigable waters of the United States will require a permit from the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899. Marine net-pen aquaculture facilities will require a Corps review that will determine the need for a Section 10 permit on a case-by-case basis. If the facility will involve the discharge of dredge or fill materials into "waters of the United States," which includes wetlands and tributaries of navigable waters, a permit under Section 404 of the Clean Water Act is required. If the facility involves both, a joint permit should be obtained.

The applicant may begin the permit process by complet-

ing an application form obtained from the Department of Wildlife, Fisheries and Parks, Bureau of Marine Resources. The application serves as a joint form to the Department of Wildlife Conservation, Bureau of Pollution Control, and the U.S. Army Corps of Engineers. A "state water quality certification" must be obtained from the Bureau of Pollution Control before the Corps can issue a 404 permit for the discharge of dredge or fill materials into any waters of the United States. Application for the certification is automatically made when submitting the 404 permit application to the Corps of Engineers.

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Marine Resources
Coastal Management Section
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

11. Oyster Bed Lease

Anyone who intends to cultivate or harvest oysters in Mississippi waters must submit a bid to the Bureau of Marine Resources (BMR).^{*} Applicants must be residents of Mississippi and should send correspondence to BMR in the form of a sealed bid (minimum bid per acre is \$1) describing the area to be leased. After a period of advertisement of not less than 15 days, the lease will be awarded to the highest responsible bid.

In addition to the lease, a BMR coastal wetlands permit is required (see discussion 2).

The same leasing regulations apply to bottom and off-bottom cultivation techniques.

If oysters are to be cultivated in structures placed on the bottom or in floating structures, an aquaculture lease from the Secretary of State is needed (see discussion 5).

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Marine Resources
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

^{*}At the time of publication, BMR was in the process of revising its oyster lease regulations. Interested parties should contact the agency for updated information.

References

Miss. Code Ann. 49-15-27 (1972 and Supp. 1988)

"A Brief Outline of the Procedures for Obtaining an Oyster Lease in Mississippi" (available from Bureau of Marine Resources office)

12. Annual Oyster Harvesting License

Every vessel that is used to catch, take, carry, or transport oysters from reefs in Mississippi must obtain an annual license. Before taking any oysters from Mississippi waters, each person shall check in and check out at the nearest designated station on the day of harvest. All oysters must be tagged on the date of harvest.

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Marine Resources
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

References

Miss. Code Ann. Section 49-15-29 (1972 and Supp. 1988)

Mississippi Department of Wildlife Fisheries and Parks Ordinance No. 1.003, "An Ordinance to Establish Regulation for the Harvesting, Landing, Unloading, Transporting, Opening and Sale of Oysters" (available from Bureau of Marine Resources office).

13. Depuration Permit

The Bureau of Marine Resources has the authority to issue permits to persons who wish to remove oysters that have been declared unsafe for a period of at least one year from public waters to private-leased grounds under the following conditions:

- Permittee must hold a valid oyster lease in Mississippi;
 - Permittee must be bonded (see discussion 4);
 - Permittee must fulfill all permit requirements;
 - Permittee shall not move oysters from one contaminated area to another contaminated area;
 - Permittee shall move oysters only to an area leased after April 13, 1977; and
 - Permittee shall not move any oysters from a contaminated area without the presence of a conservation officer.
- Only persons who have been residents of Mississippi for at least 5 years shall be eligible for depuration permits.

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Marine Resources
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

References

Miss. Code Ann. Section 49-15-37 (1972 and Supp. 1988)

14. Penal Bond

Any person obtaining a permit to remove oysters from unsafe seed grounds shall post a penal bond of \$100 per leased acre to be forfeited upon any violation of the code.

Mississippi Department of Wildlife, Fisheries and Parks
Bureau of Marine Resources
2620 Beach Blvd.
Biloxi, MS 39531
Telephone: (601) 385-5860

References

Miss. Code Ann. Section 49-15-37 (1972 and 1988)

Laws that may be applicable under certain circumstances.

15. Lacey Act

The Lacey Act makes it illegal to import into the United States or into any territory or possession of the United States any species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, or reptiles mentioned in the Act or prescribed by regulation to be injurious to humans or to agriculture, horticulture, forestry, or wildlife of the United States. All such prohibited species shall be promptly exported or destroyed at the expense of the importer or consignee.

References

16 U.S.C. Section 3371 et seq. (1985)

16. Endangered Species Act of 1973

Section 7 of the Endangered Species Act of 1973 requires all federal agencies to ensure that actions authorized, funded, or carried out do not jeopardize the continued existence of endangered species. Permits may not be granted if an aquaculture project modifies or threatens the habitat of any endangered species.

References

16 U.S.C. Section 1531 et seq. (1985)

17. The Marine Mammal Protection Act of 1972

Congress has made it illegal to import, harass, hunt, capture, or kill any marine mammal. Aquaculturists should ensure that none of their activities harm any marine mammals.

References

16 U.S.C. Section 1361 et seq. (1984 and Supp. 1988)

18. Coast Guard Regulations

To properly install and operate aquaculture-related structures in navigable waters of the United States, the aquaculturist must comply with applicable U.S. Coast Guard regulations. The U.S. Coast Guard, responsible for the regulation and enforcement of various activities in the navigable waters of the United States, requires that such aquaculture-related structures be marked with lights and signals in order to ensure safe passage of vessels. Installation and maintenance of the markers must be done by the aquaculturist as long as the structures are located in navigable waters.

The Coast Guard provides detailed requirements for marking such structures to the appropriate agency (the Bureau of Marine Resources or Army Corps of Engineers). These detailed requirements are often included as stipulations for permit approval. The prospective aquaculturist **does not need** to file the application directly with the Coast Guard.

19. The Mississippi Nongame And Endangered Species Conservation Act

Under the policy of this act, the Department of Wildlife, Fisheries and Parks is charged with managing certain nongame wildlife for human enjoyment, for scientific purposes, and to ensure their perpetuation as members of ecosystems. Wildlife indigenous to Mississippi, if found to be endangered within this state, should be protected in order to maintain and possibly enhance their numbers.

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Except as otherwise provided in regulations issued by the State Game and Fish Commission, it shall be unlawful for any person to take, possess, transport, export, possess, sell, offer for sale, or ship nongame wildlife that has been deemed by the commission to be in need of management. Likewise, except as otherwise provided in this act, it shall be unlawful for any person to take, possess, transport, export, process, sell, offer for sale, or ship any wildlife appearing on certain state and/or federal lists of endangered species.

References

Miss. Code Ann. Section 49-5-101 et seq. (Supp. 1988)

20. Antiquities Law of Mississippi

The Mississippi Department of Archives and History is charged with administration of this law, the purpose of which is to locate, protect, and preserve all sites, objects, buildings, shipwrecks, and locations of historical, archaeological, or architectural significance within the state. Permits may be delayed or denied if a particular project disturbs a historically significant site.

References

Miss. Code Ann. Section 39-7-1 et seq. (1972 and Supp. 1988)

